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TEMPERANCE BRENNAN L.P. f/s/o

Kathleen Reichs, SNOOKER DOODLE

PRODUCTIONS, INC. f/s/o Emily Deschanel,

and BERTHA BLUE, INC. f/s/o David Boreanaz

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

WARK ENTERTAINMENT, INC., f/s/o Barry
Josephson, TEMPERANCE BRENNAN L.P. f/s/o
Kathleen Reichs, SNOOKER DOODLE
PRODUCTIONS, INC. f/s/o Emily Deschanel, and
BERTHA BLUE, INC. f/s/o David Boreanaz,

Plaintiffs and Petitioners,

vs.

TWENTIETH CENTURY FOX FILM
CORPORATION, a Delaware corporation; FOX
BROADCASTING CORPORATION, a Delaware
corporation; FOX ENTERTAINMENT GROUP,
INC., a Delaware corporation; TWENTY-FIRST
CENTURY FOX INC., a Delaware corporation;
and DOES 1-20, inclusive,

Defendants and Respondents.

Related Case Nos. BC602287, BC602548
(deemed related by Dec. 21, 2015 Order)

**DECLARATION OF DANIEL A.
SAUNDERS IN SUPPORT OF PETITION
TO CONFIRM CONTRACTUAL
ARBITRATION AWARD**

Hearing Date: April 26, 2019
Time: 8:30 a.m.
Dept.: 17

RESERVATION ID 923795885748

Actions Filed: Nov. 25, 2015; Nov. 30,
2015

Trial Date: None Set

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1. I am an attorney licensed to practice law in the State of California (Cal. Bar No. 161051), and am a Partner at Kasowitz Benson Torres LLP, counsel for Plaintiffs Temperance Brennan L.P., Snooker Doodle Productions, Inc., and Bertha Blue, Inc. (“KBT Plaintiffs”). The facts set forth in this declaration are based on my personal knowledge and my review of the record, and if called as a witness, would and could competently testify thereto.

3. *Bones* (the “Series”) ran for 12 seasons and is the longest-running drama series in Fox Broadcasting Company’s (“FBC’s”) history. The Series was produced by Twentieth Century Fox Film Corporation (“TCFTV”), the television studio and production arm of the Fox conglomerate.

5. Each of the KBT Plaintiffs' contracts with TCFTV entitled them to a share of receipts from the distribution of *Bones*—a form of compensation known as “backend” contingent compensation or “profit participation.”

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1 (“21CF”) interfered with Plaintiffs’ contracts with TCFTV and induced breach thereof. TCFTV,
2 FBC, FEG, and 21CF are referred to herein collectively as “Fox.”

3 12. Series producer Barry Josephson (loan-out company Wark) filed a similar
4 complaint on November 25, 2015. Josephson and the KBT Plaintiffs are referred to herein
5 collectively as the “Plaintiffs.”

6 13. On January 11, 2016, Fox filed a Demand for Arbitration (“Fox Arbitration
7 Demand”) with JAMS. A true and correct copy of the Fox Arbitration Demand is attached as
8 Exhibit C to the Declaration of Dale F. Kinsella, filed concurrently herewith.

9 14. The Fox Arbitration Demand alleged that “[a]ll of the Claims” in Plaintiffs’ state
10 court complaints, which were attached to the Demand, “ar[o]se under the Distribution Controls
11 Paragraph.” (*Id.* at p. 11.) The Fox Arbitration Demand also stated: “To the extent that
12 [Plaintiffs] seek to raise any additional claims against Fox in their Superior Court Complaints on
13 the basis of those Agreements, Fox also seeks to resolve those disputes in this binding arbitration
14 before JAMS.” (*Id.* at p. 17.)

15 15. The day after filing the Fox Arbitration Demand, Fox moved to compel
16 arbitration of Plaintiffs’ claims pursuant to the same arbitration clause in TCFTV’s agreements
17 with Plaintiffs.

18 16. On April 8, 2016, this Court issued an order compelling certain of Plaintiffs’
19 claims to arbitration. A true and correct copy of the Court’s April 8, 2016 Order is attached
20 hereto as **Exhibit 8**. The claims compelled to arbitration included all claims in Plaintiffs’
21 complaints except those alleging that Fox incorrectly calculated Plaintiffs contingent
22 compensation.

23 17. At the outset of the arbitration and at the Arbitrator’s request, the parties
24 negotiated and entered into (and the Arbitrator approved) stipulations that set forth precisely
25 which claims and causes of action the parties agreed were arbitrable. To avoid any possible
26 doubt, the parties jointly color-coded Plaintiffs’ complaints to indicate which claims and issues
27 were fully arbitrable (yellow), which were partially arbitrable (blue), and which were not

1 arbitrable and remained in court. A true and correct copy of the KBT Plaintiffs' stipulation with
2 Fox regarding arbitrability is attached hereto as **Exhibit 9**.

3 18. The parties also entered into (and the Arbitrator approved) a stipulation under
4 which the parties agreed that the arbitration would be governed by the JAMS Comprehensive
5 Arbitration Rules & Procedures. A true and correct copy of the parties' stipulation is attached
6 hereto as **Exhibit 10**. A true and correct copy of the JAMS Comprehensive Arbitration Rules &
7 Procedures is attached hereto as **Exhibit 11**.

8 19. In discovery, Fox produced hundreds of thousands of pages of documents, and the
9 parties double- (and on some days *triple*-) tracked over 40 depositions. Following the close of
10 fact discovery, the parties prepared almost a dozen expert reports, in addition to a half-dozen
11 rebuttal reports, and deposed each other's experts. The Arbitrator also permitted the parties to
12 file two motions in limine, which Fox (but not Plaintiffs) did. Before the arbitration hearing, the
13 parties also submitted witness lists, exhibit lists, and pre-hearing briefs.

14 20. The arbitration hearing took place over 20 days in July and August of 2018 (July
15 9-13, 16-19, and 23-27, and August 6-10 and 13). The Arbitrator permitted the parties to make
16 opening statements, examine over 40 live witnesses (several of whom testified on multiple days),
17 introduce documents, and make evidentiary arguments throughout the hearing in support of their
18 positions. The Arbitrator also ordered additional discovery during the pendency of the
19 arbitration hearing as new facts came to light.

20 21. Throughout all these stages of the arbitration, the parties fully litigated the
21 arbitrable claims as set forth in the parties' stipulations, including Plaintiffs' claim that
22 TCFTV—in spite of never having granted FBC the right to distribute *Bones* in digital
23 streaming—allowed millions of dollars of revenue from affiliated digital streaming platform
24 Hulu to be diverted to FBC (the "Hulu Ownership Claim"), as well as Plaintiffs' claim for
25 punitive damages.

26 22. For example, Fox's pre-hearing brief referred to Plaintiffs' "New Media Claim 2:
27 The Studio's Granting to FBC of Certain In-Season New Media Rights." Fox further
28

acknowledged that “Respondents . . . argu[ed] that there was no executed agreement between FBC and the Studio,” and argued in return that “[a]s shown by (1) the contemporaneous exploitation across all of the Studio’s shows that aired on FBC (not just Bones), (2) the testimony of everyone except Respondents’ expert, and (3) the larger industry custom and practice, there was clearly an agreement for an in-season/out-of-season split between FBC and the Studio.”

23. Similarly, in its opening statement, Fox addressed Plaintiffs’ argument that “the in-season revenue for Hulu should have gone to the studio and not the network,” arguing that “there was a deal struck between the network and the studio” by which “the network got in-season streaming[.]” When the Arbitrator asked when this “deal” was struck, Fox’s counsel noted that “[t]his was an oral deal which occurred in the 2007/2008 time frame,” and in response to further questioning regarding “[w]ho spoke with whom,” counsel stated, “We’ll get to the evidence, Your Honor. We’ll get to the evidence in terms of who spoke with who[.]”

24. Moreover, at the hearing, Fox questioned witness Mark Pearson extensively regarding the Hulu Ownership Claim. Fox’s counsel even used and marked as an exhibit a chart compiling Mr. Pearson’s testimony regarding the dates and terms of TCFTV’s and FBC’s purported “understandings” relating to the division of digital streaming rights.

25. The parties delivered several hours of closing arguments on September 8, 2018. In its closing argument, Fox for the first time raised challenges to the arbitrability of certain of Plaintiffs’ claims, including their Hulu Ownership Claim and claim for punitive damages. Prior to closing argument and during two-and-a-half years of arbitration, Fox had never taken the position—in briefing, at the hearing, or otherwise—that any of the issues before the Arbitrator were not subject to arbitration.

26. After the close of the hearing, Plaintiffs and Fox submitted multiple closing briefs on liability and damages issues totaling over 100 pages per side. The Arbitrator also ordered additional, separate briefing on the “arbitrability” issues raised by Fox at closing argument; Fox submitted an opening brief, Plaintiffs an opposition brief, and Fox a reply brief.

27. The Arbitrator issued his Interim Award on December 7, 2018. It found in favor of Plaintiffs and against Fox on almost all of Plaintiffs' claims and rejected Fox's arbitrability challenge. The Interim Award also requested certain information necessary to allow the Arbitrator to render his Final Award. First, it ordered Plaintiffs' damages expert to calculate actual damages for international licensing in accord with the findings set forth in the Interim Award. Second, it awarded Plaintiffs pre-judgment interest under California Civil Code section 3287(b), and directed them to "submit a proposed calculation." Third, while the Arbitrator held that Plaintiffs were entitled to punitive damages on their fraud and two separate tortious interference claims, the Interim Award did not specify an amount, but rather, "bifurcate[d] the proceedings" to "consider Claimants' financial condition." Finally, the Arbitrator "retain[ed] jurisdiction" for, *inter alia*, "the purpose of settling costs" and resolution of "any other matters not specifically mentioned but relevant to the arbitration, inclusive of arguments surrounding the issues of attorneys' fees and the allocation of the Arbitrator's fees."

28. In response to the Arbitrator's requests in the Interim Award, Plaintiffs' expert calculated actual damages on the international licensing claims to be \$7,078,327. Plaintiffs' expert also computed the average daily pre-judgment interest to be \$8,978.

29. On January 4, 2019, the parties stipulated to reasonable fees and costs of \$3,558,608.30 for Wark (\$2,771,494.30 in attorneys' fees and \$787,114 in costs), and \$3,842,942.94 for the KBT Plaintiffs (\$3,087,989.50 in attorneys' fees and \$754,953.44 in costs). Plaintiffs, however, reserved their "right to seek fees and costs incurred from the effective date of th[e] stipulation through confirmation and/or resolution of any appeal of the Final Award." A true and correct copy of that stipulation is attached hereto as **Exhibit 12**.

30. Also on January 4, 2019, in connection with the Arbitrator's request for evidence of financial condition relating to punitive damages, the parties stipulated that Fox's net worth was almost \$22 billion. A true and correct copy of that stipulation is attached hereto as **Exhibit 13**.

31. At the Arbitrator's instruction, the parties then each briefed the amount of punitive damages that they believed should be awarded, and replied to each other's briefing.

32. The Arbitrator issued his Final Award on February 4, 2019, and the award was served on the parties on February 8, 2019. The Final Award makes the same substantive factual findings and legal conclusions as the Interim Award, with the addition of the Arbitrator's decision regarding the amount of punitive damages.

33. On February 14, 2019, Plaintiffs alerted the Arbitrator to a mathematical error in the award—namely, double-counting of certain arbitration fees that resulted in a duplicative award against Fox and in Plaintiffs’ favor—and requested correction of this mathematical error. Fox did not object to the correction, and represented to JAMS that it had no corrections of its own.

34. The Arbitrator served the Amended Final Award, which corrected the mathematical error, on February 20, 2019. Aside from that correction, the Amended Final Award is identical to the Final Award and bears the same date (February 4, 2019).

35. On February 19, 2019, the parties agreed via e-mail that no party would petition to confirm or vacate the Arbitrator's corrected Final Award until February 27, 2019, and that all parties waived any right they may have to contest the timeliness of the filing of any such petition under California Code of Civil Procedure Section 1288.4.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 27, 2019, in Los Angeles, California.

/s Daniel A. Saunders
Daniel A. Saunders

Exhibit 1

JAMS ARBITRATION CASE REFERENCE NO. 1220052735

TWENTIETH CENTURY FOX FILM CORPORATION, a Delaware corporation; FOX ENTERTAINMENT GROUP, LLC, a Delaware limited liability corporation; TWENTY-FIRST CENTURY FOX, INC., a Delaware corporation; and FOX BROADCASTING COMPANY, a Delaware corporation,

Claimants,

vs.

WARK ENTERTAINMENT, INC. *f/s/o* BARRY JOSEPHSON; TEMPERANCE BRENNAN, L.P. *f/s/o* KATHLEEN REICHS; SNOOKER DOODLE PRODUCTIONS, INC. *f/s/o* EMILY DESCHANEL; and BERTHA BLUE, INC. *f/s/o* DAVID BOREANAZ,

Respondents.

Amended Final Award

WARK ENTERTAINMENT, INC. *f/s/o* BARRY JOSEPHSON; TEMPERANCE BRENNAN, L.P. *f/s/o* KATHLEEN REICHS; SNOOKER DOODLE PRODUCTIONS, INC. *f/s/o* EMILY DESCHANEL; and BERTHA BLUE, INC. *f/s/o* DAVID BOREANAZ,

Counter-Claimants,

vs.

TWENTIETH CENTURY FOX FILM CORPORATION, a Delaware corporation; FOX ENTERTAINMENT GROUP, LLC, a Delaware limited liability corporation; TWENTY-FIRST CENTURY FOX, INC., a Delaware corporation; and FOX BROADCASTING COMPANY, a Delaware corporation,

Counter-Respondents.

Amended Final Award

AMENDED FINAL AWARD

The Undersigned Arbitrator, having been designated by the parties, and having read and considered the submissions, documentary and testimonial proof, arguments and allegations of the parties, finds, concludes and issues this Final Award, as follows:

I.

INTRODUCTION

Summary of Contentions

At issue in this Arbitration are the claims of Respondents Wark Entertainment, Inc. f/s/o Barry Josephson ("Josephson"), Temperance Brennan, L.P. f/s/o Kathleen Reichs ("Reichs"), Snooker Doodle Productions, Inc. f/s/o Emily Deschanel ("Deschanel"), and Bertha Blue, Inc. f/s/o David Boreanaz ("Boreanaz") (collectively, "Respondents" or "Participants") against Twentieth Century Fox Film Corporation ("TCFTV"), Fox Entertainment Group, LLC ("FEG"), Twenty-First Century Fox, Inc. ("21CF"), and Fox Broadcasting Company ("FBC") (collectively, "Claimants" or "Fox") relating to the television series "Bones." The series was based on the best-selling fiction novels by Reichs, and the characters were played by Deschanel and Boreanaz. Josephson served as the executive producer who developed the Series.

The claims emanate from Respondents' agreements with TCFTV ("Agreements") which include "backend" contingent compensation. Respondents contend that Fox breached its obligations under these Agreements in multiple licensing transactions – domestic broadcasting, international licensing, and streaming - and they assert claims for breach of contract, fraud, tortious interference with contract and inducing breach of contract. Fox denies the claims brought by Respondents and asserts that it carried out all of its contractual obligations and duties. Fox further contends that contrary to the allegations and assertions of Respondents, its comportment and business decisions affecting the show actually secured the show's future and at the same time enhanced the remuneration ultimately paid to its Participants.

In that regard, Fox determined that it did not make business sense to exercise a full cost of production option for Season 5 as it would have resulted in a loss of millions of dollars if those fees were paid over the two-season period. To quote Fox's opening brief: *"Bones was a middling show with middling ratings"* and did not justify a license fee of that magnitude. Rather,

Fox declined its option for Bones and negotiated a new license fee with TCFTV. The parties eventually agreed on a \$2 million per episode fee, along with a [REDACTED], for two seasons.

Fox argues that the evidence demonstrates unequivocally that its only viable business alternative was to pay a \$2 million per episode license fee or let the show be cancelled. Moreover, the license agreement finally negotiated for Bones Seasons 5 and 6 (i.e. the \$2,000,000 per episode amount) actually kept the show alive and in the end generated millions more in revenue for Respondents. Fox is adamant that the license fee eventually agreed upon and negotiated for the show was on "monetary terms comparable" to "similar transactions" for licenses between itself and third parties for "comparable programs."

Fox believed that not one of its competitors would pay a higher license fee and in Fox's view, it was better off losing Bones than risking millions of dollars with a full cost fee. Additionally, Fox contends that Josephson and Reichs are barred from challenging the license fees for Seasons 5 and 6 as they both knowingly and willingly executed a Release.

While each side has proffered many more contentions and defenses than outlined above, their respective arguments will be addressed in further detail below.

II.

PRELIMINARY ISSUES

All Claims Presented Are Arbitrable

At the outset, the Arbitrator finds it necessary to address an issue that was long ago put to bed and long ago the subject of a painstakingly detailed stipulation by and among counsel. Astonishingly, Fox, now for the first time, takes the position that certain critical issues presented and argued by Respondents are not arbitrable and as such outside the purview and authority of this Arbitrator and the matters before him.¹

¹ To provide perspective as to the timeliness of this contention, it is to be noted that Fox raised this argument for the first time in the final hour of closing arguments, after 4+ weeks of hearings and 2 & 1/2 years of proceedings. Not one word of arbitrability was ever mentioned or addressed in any pre-trial hearings or in Fox's opening briefs.

To highlight the Arbitrator's dismay as well as Fox's indefensible position in this regard, a chronology of Fox's actions will be discussed. It must be noted that the following facts are incontrovertible.

First, it was Fox that filed the Demand for Arbitration which gave rise to the proceedings herein. Fox did not wait to compel arbitration; it actually proceeded with its demand and initiated the arbitration prior to any motion and always took the position that all claims presented were and are arbitrable, save and except Respondents' claims for an audit.

Second, and perhaps most interesting to this analysis is that while counsel for Respondents did pursue a State Court action *attempting to avoid arbitration*, it was Fox who, once again, took the position that arbitration of Respondents' claims was mandated per the terms of the agreements between TCFTV and its Participants. In fact, Fox doubled down on this position before the Honorable Richard E. Rico when it filed its motion to compel arbitration. Fox prevailed, and arbitration was ordered, and the State Court action was stayed. Accordingly, the doctrine of judicial estoppel precludes any late proffered position to the contrary.

Third, having prevailed in State Court with its motion to compel and once again raising this issue with the Arbitrator at the first Arbitration Management Conference, the parties not only stipulated that the claims presented here are to be arbitrated but in addition thereto *highlighted by hand* those pleadings and causes of action that are the subject of these proceedings so as to avoid the very issue and argument now being proffered at the stroke of midnight. The parties did exactly what was ordered by the Arbitrator. Not only was a stipulation entered into, but with their own hands, the parties highlighted all claims subject to these proceedings and the jurisdiction of the Arbitrator so as to leave no doubt that this argument should not have been brought.

Hence, Fox, in presenting this belated contention, must overcome the following:

1. Judicial estoppel which precludes any and all assertions to the contrary;
2. A Stipulation that it willingly entered into; and
3. Waiver with respect to any argument to the contrary.

Each of these points will be addressed below so as to leave no doubt that Fox's position is disingenuous at best and specious at worst.

Fox specifically addresses two claims which it argues are not arbitrable:

- (1) Respondents' ownership claim related to Hulu, and
- (2) Respondents' "reasonable and nondiscriminatory" claim.

Under California law, "parties may expressly agree to arbitrate: (1) in a contract signed before a dispute arises, . . .; or (2) in a binding stipulation to arbitrate entered into after a dispute has arisen." Douglass v. Serenivision, Inc., 20 Cal. App. 5th 376, 387 (2018). In this instance, both a signed contract and a binding stipulation are present and cannot be argued to the contrary.

In January 2016, Fox submitted its Statement of Claim to JAMS. In its Statement of Claim, Fox set forth the claims alleged in the Complaint: against TCFTV for breach of contract, breach of the covenant of good faith and fair dealing, and declaratory judgment; against FBC, FEG and 21CF for inducing breach of contract and intentional interference with contract; against TCFTV, FBC and FEG for unfair competition; and against all Claimants for fraudulent inducement, fraudulent concealment, and an accounting. (Statement of Claim, ¶ 25.) Fox's demand went on to state: ***"All of the claims raised in those Complaints, however, are subject to the parties' agreements to arbitrate. Indeed, binding and applicable arbitration provisions are found in the very Agreements that the Respondents claim they want enforced."*** (Statement of Claim, ¶ 26.) (Emphasis added.)

Fox explicitly states that through its Demand, it "seeks to enforce the parties' agreement to arbitrate these disputes." (Id. at ¶ 32.) It went on to state that ***"[t]o the extent that Respondents seek to raise any additional claims against Fox in their Superior Court Complaints on the basis of those Agreements, Fox also seeks to resolve those disputes in this binding arbitration before JAMS."*** (Id.)(Emphasis added)

Thereafter, Fox moved to compel arbitration of the claims brought by Respondents in the Superior Court. On April 8, 2016, Judge Rico issued an Order granting Fox's motion to compel and staying the non-arbitrable claims. More specifically, he found that the Self-Dealing, 2009 Release, and Non-Contractual Claims are all subject to arbitration, and the Contingent Compensation Claims are not subject to arbitration. (See 4/8/16 Order, pp. 3-7.) Fox, having obtained the relief it sought in Superior Court, is now prevented from currently asserting an inconsistent position under the doctrine of judicial estoppel.

Even beyond Judge Rico's Order, during the Arbitration Management Conference held on April 26, 2016 (a mere 18 days after the Court's order), the Arbitrator, in a desire to ensure that all parties were clear about the issues subject to arbitration and the claims to be resolved, raised this very issue so as to put to rest the potential for a later claim that the arbitrator resolved a matter reserved for the court. As a result, the Arbitrator ordered the parties to meet and confer to reach a formal stipulation as to each and every claim that is the subject of the Cross Demands for Arbitration. (Scheduling Order No. 1 dated May 2, 2016)

Subsequently, the parties submitted such a stipulation entitled "Stipulation Regarding Claims in Arbitration" and to it is attached the Statement of Claim. The parties set forth their understanding of Judge Rico's April 8, 2016 Order regarding the claims subject to arbitration. As they represent in the Stipulation:

[T]he parties understand the April 8 Order to pertain to four categories of claims alleged in the KBTF Respondents' Complaint: (1) "Self-Dealing Claims," which are claims related to the allegations that TCFTV entered into transactions with affiliates on terms that were not comparable to the terms on which the affiliated entity entered into similar transactions with unrelated third parties; (2) "2009 Release Claims," which are claims related to 2009 release agreements concerning Seasons 5 and 6 of *Bones*; (3) "Contingent Compensation Claims," which are claims that TCFTV miscalculated, misclassified, or improperly allocated the contingent compensation to which the KBTF Respondents are due or failed to negotiate their contingent compensation to which the KBTF Respondents are due or failed to negotiate their contingent compensation definitions in good faith; and (4) "Failure to Permit Audit Claims," which are allegations by the KBTF Respondents that TCFTV failed to provide the auditor with documents it was contractually obligated to provide.

(Stipulation, ¶ 2.) The parties then state: "The Self-Dealing and 2009 Release Claims are arbitrable; the Contingent Compensation and Failure to Permit Audit Claims are not." (*Id.*) They even highlighted the exact claims in the Complaint that "are fully arbitrable." (*Id.* at ¶ 2.)

To be clear, Fox belatedly challenges only two claims. In its Reply Brief re Arbitrability, it argues that it was the Superior Court ruling that set the scope of the arbitration and cannot be challenged. It is interesting to note that it was Fox that sought the Superior Court ruling and entered into the very stipulation it now seeks to disavow. Having initiated the Demand for Arbitration and having likewise stipulated to arbitrate the very claims presented by the Respondents, Fox now argues that Judge Rico's order actually circumscribes these proceedings

and somehow likewise circumscribes/nullifies the stipulation it entered into. Judge Rico's order does no such thing and does not void the operative stipulation.

Simply put, the two claims challenged by Fox are clearly within the scope of this Arbitration, as they relate to the Self-Dealing Claims which the parties explicitly agreed to arbitrate - in both a signed agreement before a dispute arose and in a "binding stipulation to arbitrate entered into after a dispute has arisen."

As analyzed herein, the Hulu ownership claim is part of Respondents' claim that Fox licensed in-season streaming rights for Bones to its affiliate Hulu on artificially low monetary terms in violation of the self-dealing protections. More specifically, the issue of whether TCFTV or FBC owned the in-streaming rights to Bones must be decided as a factual predicate to the self-dealing claim. Respondents' claim to their share of \$95.9 million that should have been included in TCFTV's Gross Receipts presupposes that TCFTV possessed the in-season streaming rights for Bones on Hulu.

The reasonable and nondiscriminatory claims look at the same conduct by TCFTV in its licensing that is challenged by Respondents and examines whether it also breached TCFTV's obligation to distribute Bones "on a reasonable and non-discriminatory basis." "Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together." Cal. Civ. Code § 1642. Here, the "reasonable and non-discriminatory" standard of Paragraph VII.BB applies to the "distribution . . . of the Program directly or by any Subsidiary, Affiliate, or other Party," and thus modifies the "complete, exclusive and unqualified discretion and control as to time, manner, and terms of [] distribution" standard found in Paragraph 10(a) of the Agreements. To determine whether Fox breached its contractual obligations through self-dealing, it is necessary to look at Paragraph VII.BB in conjunction with Paragraphs 10(a) and (b) to ascertain what those obligations were.

Certainly, the Hulu ownership and reasonable and non-discriminatory claims do not fall within the ambit of the Contingent Compensation and Failure to Permit Audit Claims which are the only claims remaining in Superior Court. Judge Rico's order distinguished between claims that "challenge Fox's calculation or reporting of Plaintiff's contingent compensation under . . . the MAGR Definition," which are not arbitrable, and claims that "challenge Fox's decision to broadcast the series on Fox," which are arbitrable.

Even if the parties' explicit agreements to arbitrate are not enough, which the Arbitrator finds that they are, Fox has waived the right to make jurisdictional challenges regarding any of the claims. Under JAMS Comprehensive Arbitration Rules & Procedures, "jurisdictional and arbitrability disputes, including disputes over the formation, existence, validity, interpretation or scope of the agreements under which Arbitration is sought, and who are proper Parties to the Arbitration, shall be submitted to and ruled on by the Arbitrator." JAMS Rule 11(b). The California Court of Appeal has held that the incorporation of JAMS Rule 11 "serves as clear and unmistakable evidence of the parties' intent to delegate such issues [of arbitrability] to an arbitrator" and "authorized the arbitrator to make the *final* decision regarding what issues were arbitrable." Greenspan v. LADT, LLC, 185 Cal. App. 4th 1413, 1442-43 (2010) (internal quotations and citation omitted; emphasis in original).

"Jurisdictional challenges under Rule 11 shall be deemed waived, unless asserted in a response to a Demand or counterclaim or promptly thereafter, when circumstances first suggest an issue of arbitrability." JAMS Rule 9(f). Fox has waived any challenge to the arbitrability of any of the claims in this matter by willingly participating over the past two and a half years without contesting the Arbitrator's jurisdiction. Not only did Fox initiate this Arbitration, but it has willingly engaged in discovery, submitted discovery disputes to the Arbitrator, offered witnesses for deposition, and notably, engaged in an over a month-long arbitration hearing. During all this time, Fox has never disputed that the Arbitrator had authority to make a final disposition of all claims presented.²

Fox asserts that the Hulu ownership claim was first raised in Ms. Zigler's April 30, 2018 expert report, yet Fox does not even attempt to explain its delay of over four months to first raise an objection to arbitrability. Moreover, as Fox points out, this issue was raised much earlier – in one of the Superior Court complaints that Fox compelled to arbitration and in the first depositions in this case. (Respondents' Arb. Br. Ex. 1 at Ex. B, p. 13, ¶ 25; Ex. 5 at 178:9-

² Fox argues that it could not have waived its arbitrability argument because the burden was on Respondents to amend their claims. However, no amendment was needed since the claims are within the scope of arbitration. Moreover, the burden was on Fox as the party challenging arbitrability to raise this issue "when circumstances first suggest an issue of arbitrability." Clearly, Fox did not do so and likewise Fox gave no hint of any arbitrability issues at any time during this case as it cannot point to any time prior to the closing hours of the hearing wherein it even suggested such an issue.

179:2.) Similarly, Fox was aware of Respondents' Paragraph VII. BB breach claims before the hearing yet failed to raise any objections. (Respondents' Pre Hrg. Br. at 2, 4.)

Not only is a finding of waiver compelled by JAMS Rules, but it is also supported by case law independent of Rule 9(f). Fox, relying on Ficek v. S. Pac. Co., 338 F.2d 665, 657 (9th Cir. 1964), suggests that waiver can only apply if a party waits until after the arbitrator's decision to raise an objection. However, the Ninth Circuit held that Ficek is "equally applicable" to objections raised before the arbitrator's decision, reasoning that "[i]t would be unreasonable and unjust to allow [the defendant] to challenge the legitimacy of the arbitration process, in which he had voluntarily participated over a period of several months." Fortune, Alsweet & Eldridge, Inc. v. Daniel, 724 F.2d 1355, 1357 (9th Cir. 1983) (per curiam).

The Arbitrator disagrees entirely with Fox's assertions, which represent a transparent attempt to derail this Arbitration before the final award is issued. See Nghiem v. NEC Elec., Inc., 25 F.3d 1437, 1440 (9th Cir. 1994) (affirming arbitrator's decision where claimant initiated arbitration, attended hearing with representation, presented evidence, and submitted closing brief before getting cold feet and filing suit in state court prior to decision; stating "[o]nce a claimant submits to the authority of the arbitrator and pursues arbitration, he cannot suddenly change his mind and assert lack of authority"). It is frivolous for Fox to claim belatedly that certain claims have arisen that suggest an issue of arbitrability. These very same arguments and issues have been heavily litigated throughout this case and certainly during the month and a half arbitration hearing.

In sum, from the inception of this case, Fox sought to compel arbitration of the present claims, and its attempt to offer last-minute arguments otherwise is unsupported factually and legally. Accordingly, all claims presented herein are arbitrable and the Arbitrator has the power to issue a binding award as to the claims presented herein.

Punitive Damages Are Available for the Tort Claims

Another issue raised by Fox for the first time during its closing argument and in its Post-Hearing Brief is the availability of punitive damages. Fox argues that the Agreements expressly bar Participants' claim for punitive damages. Fox relies on the following from Paragraph 10(b):

Each of Company and Artist agrees that Company's and Artist's sole remedy against Fox for any alleged failure by Fox to comply with the terms of this paragraph shall be actual damages, and Company and Artist hereby waive any right to seek or obtain preliminary or permanent injunctive relief *or punitive relief* in connection with any such alleged failure (Emphasis added).

The Arbitrator finds that this limit on punitive damages in Paragraph 10(b) does not apply to the alleged tortious conduct of Fox. To begin with, on its face, the waiver applies only to "any alleged failure by Fox to comply with the terms of [Paragraph 10(b)]." In other words, it applies to the contract claims only, and Respondents do not seek punitive damages related to the contract claims.

Furthermore, "Fox" as used in Respondents' agreements is defined as "Twentieth Century Fox Television, a unit of Twentieth Century Fox Film Corporation." Therefore, the "alleged failure" referenced in the waiver is the Studio's failure to comply with Paragraph 10(b). The waiver does not apply to Respondents' tort claims against the non-studio Claimants and fraud claim against TCFTV.

Even beyond the plain language of the waiver and its inapplicability to the tort claims here, California Civil Code § 1668 provides:

All contracts, which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the persons or property of another, or violation of law, whether willful or negligent, are against the policy of the law.

As courts have found, "This section made it clear that a party could not contract away liability for his fraudulent or intentional acts" Gardner v. Downtown Porsche Audi, 180 Cal. App. 3d 713, 716 (1986). Indeed, "[i]t is now settled—and in full accord with the language of the statute—that notwithstanding its different treatment of ordinary negligence, under section 1668, a party [cannot] contract away liability for his fraudulent or intentional acts or for his negligent violations of statutory law, regardless of whether the public interest is affected." Health Net of Cal., Inc. v. Dept. of Health Servs., 113 Cal. App. 4th 224, 234 (2003) (internal quotations and citations omitted). Thus, any alleged waiver of tort claims and punitive damages in Paragraph 10(b) is barred by Section 1668. See Ting v. AT&T, 182 F. Supp. 2d 902, 925 (N.D. Cal. 2002) (contractual provision limiting recovery to direct damages, but precluding

punitive damages, was impermissible under section 1668), aff'd in part, rev'd in part on other grounds, 319 F. 3d 1126 (9th Cir. 2003).

Fox seeks to argue that it “does not matter that Participants are alleging tort, rather than contract, claims as the basis for punitive damages.” It relies on Judge Rico’s order that tort claims are only arbitrable because they arise out of Paragraph 10(b) as “self-dealing claims.” Fox’s reliance on Judge Rico’s finding regarding the *arbitrability* of the tort claims is sorely misplaced. In no way can Judge Rico’s determination that tort claims that arise out of the contractual relationship are subject to the parties’ arbitration provision be twisted to bar available remedies at law for intentional torts.

Thus, Fox overreaches with its argument based on the language of Paragraph 10(b). The plain language of Paragraph 10(b) does not apply to prevent an award of punitive damages against the non-Studio Claimants for intentional torts and against TCFTV for fraud.

III.

BREACH OF CONTRACT THROUGH THE RELEASE AND FRAUD

The Claim for Breach of Contract

Respondents argue that TCFTV (also sometimes referred to as the Studio) breached the Affiliate Transaction Protection provision in all of Respondents’ Agreements for Seasons 5-8. They argue that not only did TCFTV fail to transact with its affiliates on comparable monetary terms to its transactions with unrelated third-party distributors for comparable programs, but that it likewise had no intention of complying.

Fox, on the other hand, argues that FBC (also sometimes referred to as the Network) determined that it did not make business sense to exercise the full-cost option for Season 5 because *Bones* was a middling show with middling ratings. Instead, Fox claims, FBC declined its option for *Bones* and negotiated a new license with the Studio. It asserts that the *Bones* Seasons 5 and 6 license agreement not only permitted *Bones* to stay on the air and continue generating millions in revenue for Respondents, but it was also on “monetary terms comparable” to “similar transactions” for licenses between FBC and third parties for “comparable programs,” as were the licenses for Seasons 7 and 8. These assertions, however, do not comport with the evidence presented.

As early as January 2009 there is no doubt, based on the email sent by Peter Ligouri dated January 11, 2009 (Exhibit 417A), that FBC had already decided, resolved and determined that it was not going to pay a full cost-of-production license fee for the fifth and sixth seasons of Bones. As far as FBC was concerned, Bones was not worth the cost or effort of further production on a full cost-of-production basis. Or so it led its talent to believe. These facts are undisputed and confirmed by both the documentary evidence and the testimony of the FBC witnesses themselves. Additionally, this was confirmed by the Fox Studio witnesses who were supposed to be aligned with Respondents.

Hence, with zero surprise, FBC declined its option. While FBC takes the position that it knew it might risk losing the show to another network the real question is, did FBC truly intend on cancelling the show or was another strategy in play? Once again and without any controverting evidence, the Fox Studio executives (TCFTV), knowing the fate of its show as early as January 2009, did absolutely nothing to ensure its survivability until the stroke of midnight whereupon the testimony demonstrates a feckless effort to protect its own interests and the interests of Respondents.

While feigning protest and an inability to do nothing other than capitulate, the Studio executives (TCFTV) became willing partners with the Network (Fox) to lead its talent into a deal that was not only favorable to the its parent network but likewise assuring itself no participant leakage. The parties did eventually agree on a \$2 million per episode license fee, along with a [REDACTED] for two seasons, but the cost of doing so for Respondents came at the cost of a release and a complete disregard for the contractual obligations owed by TCFTV.

The analysis begins with the Affiliate Transaction Protection provision found in Paragraph 10(b) of the Participant Agreements ("Paragraph 10(b)"), which provides:

b. Dealings with Affiliates: Each of Company and Artist acknowledges that Fox is part of a diversified, multi-faceted, international company, whose affiliates include, or may in the future include, among others, exhibitors, television "platforms", networks, stations and programming services, video device distributors, record companies, internet companies, so called "E. Commerce companies", publishers (literary and electronic) and wholesale and retail outlets (individually or collectively, "Affiliated Company or Companies"). In consideration thereof, Fox agrees that Fox's transactions with Affiliated Companies will be on monetary terms comparable to the terms on which the

Affiliated Company enters into similar transactions with unrelated third-party distributors for comparable programs.

The Arbitrator agrees with Respondents that not only did TCFTV fail to comply with Paragraph 10(b) but that it also never intended to comply with Paragraph 10(b).

Fox's documents and testimony establish that TCFTV had no intention or ability to transact with its affiliates "on monetary terms comparable to the terms on which [Fox Affiliates] enter[] into similar transactions with unrelated third party distributors for comparable programs." The evidence in this regard is uncontroverted by both the Fox Studio witnesses and the Network witnesses. Every witness from both TCFTV and FBC testified that TCFTV executives did not have access to, or they did not seek, information concerning FBC's transactions with unaffiliated third-party studios at the time they entered into any of the agreements for Bones.

First, Mr. Howard Kurtzman, head of Business Affairs for TCFTV, testified that he has no recollection of ever having conversations with FBC about comparable programs. (7/12/18 Tr. at 800:9-801:17; 905:15-907:6; 942:14-943:23; 950: 9-951:2; 907:2-6.) He testified that he had no access to FBC's license fee information with third party distributors. (*Id.* at 943:5-12.) When asked whether TCFTV ever asked for third party agreements in connection with Seasons 5 and 6 license negotiations, Kurtzman responded, "I don't believe so. We weren't - - we weren't privy to those agreements." (*Id.* at 943:19-23.)

Next, Ms. Dana Walden, Co-President of TCFTV, testified as follows:

Q. In fact, you didn't make any effort as part of the negotiations over Season 5 of Bones to learn what FBC paid any unaffiliated third-party studio for any other series in Seasons 5 and 6; correct?

A. We were not allowed to get that information from the Network.

(7/16/18 Tr. at 1307:20-1308:18.) In fact, she testified that she never read or understood the participant agreements. (*Id.* at 1263:23-1266:23.)

Although Ms. Walden claimed that she was more on the "creative" side as Co-President of TCFTV, her complete lack of knowledge of the agreements of those whose interests she represented is either shocking if true, or disingenuous if false. Her understanding of the Studio's obligation to participants under the Affiliate Transaction Protection clause is that the "deals must

be as good as marketplace deals. So that when we're making a deal with a sister company, we are making a deal that we feel is a fair marketplace deal." (Id. at 1265: 1-7.) Ms. Walden, at this point in time in 2009, had been a co-head of the Studio for ten years and had absolutely no idea what the standard was with respect to dealing with affiliates.

Mr. Barron, the Studio CFO, similarly testified that he had no access to the information and no insight to share. (8/13/18 Tr. at 5169:8-20; 5170:3-9.) He was not involved in anything at FBC, so there was no comparability analysis involving FBC numbers. (Id. at 5155:15-23.)

This testimony of the Studio was consistent on the Network side. Mr. Ira Kurgan, Head of Business Affairs for FBC, testified that nobody ever mentioned the comparable terms standard. When asked whether the Studio ever told him that he was obligated to pay the license fee for Bones on monetary terms comparable to what the Network was paying for other shows, he said "that never came up":

Q. And nobody from the Studio ever said the license fee for Bones has to be on comparable terms to your agreements with unaffiliated studios because we have a contractual obligation to the participants, right?

A. Yeah, that never came up.

(7/18/18 Tr. at 1814:10-21.) As a result, he never told the Studio what FBC was paying for comparable programs. (Id. at 1815: 22-25.)

Mr. Peter Rice, Chairman of FBC, testified that he did not look at comparable programs or ask anybody to do so:

Q. I'll do this one slowly again. At any time during the year 2009, did you personally ever embark upon the task of trying to figure out if there was a show that was comparable to Bones?

A. Not that I recall.

Q. Did you ever instruct anybody to do that?

A. Not that I recall.

Q. At any time during the time you were negotiating the license fee for Seasons 5 and 6 of Bones, did you ever embark upon the task of trying to find out what comparable programs of Bones here were on other networks?

A. Not that I recall.

(7/13/18 Tr. at 1057:9-1058:9.)

As Respondents point out, it is necessary to address Mr. Gary Newman's testimony last since everybody pointed to Mr. Newman as the person who would know about the comparability standard. Mr. Newman, the other Co-President of TCFTV, testified he did not recall whether he asked anybody at the Network for the requisite comparable information, and he did not recall whether anybody from the Network ever provided him with that information. (7/23/18 Tr. at 2381: 5-18.)

Then, Mr. Newman revealed that he was involved in the group that conceived of Paragraph 10(b):

Q. Now, from being involved in the group that conceived this paragraph, do you have an understanding of what the goals were in terms of this particular language?

A. Yes.

Q. What are the goals?

A. You know, as we were trying to come up with a standard of dealing that, that would be as objective as we could make it, we decided to utilize the comparable terms that the affiliated company, so in our case it would have been the Fox network, had entered into with third parties."

(Id. at 2543:17-2544:10.)

In direct contrast to Ms. Walden's understanding of the Studio's obligation to participants, Mr. Newman stated that the goal of Paragraph 10(b) was to make an objective standard. He explained why:

[W]e felt that was a better standard than the more subjective ones, like fair market value or other such things. We wanted something that you could actually go find data and be able to draw your conclusions from, from that data.

(Id. at 2544:1-10.)

Not only do each of the co-presidents of the Studio initially vary widely in their understanding of the obligations the Studio had toward its talent, Ms. Walden actually attempted to provide a completely different interpretation, enabling Fox to defend itself on the basis of fair market value. This concept nowhere appears in the contract.

Ironically, when Mr. Newman was recalled to the stand on behalf of Fox, he then tried to adopt Ms. Walden's concept of fair market value and move away from the very language of the provision itself and one he helped develop. By attempting to morph the language of the

operative contract to one of fair market value, both the Network and the Studio are in sync with one another in their defense of the breach claims. However, this attempt to adopt the same understanding only serves to highlight the breach and their impeachment.

Even after stating that the standard was an objective one requiring data, Mr. Newman did not recall whether he himself ever did any research or asked anybody to do research to aid in the Studio's negotiations with the Network. (*Id.* at 4088:14-24.) Instead, Mr. Newman claims he went to agents to get marketplace information regarding Season 5. (*Id.* at 4087:15-4089:4.) Essentially, this "marketplace information" was gathered from a single lunch conversation about CBS's renegotiation on Ghost Whisperer with ABC Studios. (Respondents' Ex. 2159-0001.) Not only did this testimony lack any specificity, but more importantly, to reiterate, "*market information*" is not the standard under Paragraph 10(b).

Fox's own witnesses – from the Studio and the Network - establish that Fox did not even attempt to comply with Paragraph 10(b). In fact, there is no evidence that even one Fox employee asked for, received, or reviewed a "similar transaction[]" with unrelated third party distributors for comparable programs."

The testimony of both Mr. Newman and Ms. Walden regarding "marketplace information" is not only troubling but extremely disconcerting. The more these individuals testified the more incredulous their testimony appeared. Specifically, their testimony was not only "*NOT*" at odds with the Network but actually served the interests of the Network, meaning if they could successfully morph the standard of third party comparables to some marketplace value it would then serve to argue that no breach occurred since the value of Bones was fairly calculated and achieved.

This is not a case of insufficient, questionable, or unreliable information. Rather, this is a case of a complete absence of information, and the plain words of Paragraph 10(b) require that Fox look at "similar transactions with unrelated third- party distributors for comparable programs." This was not done, and Fox cannot deny this fact.

While admitting that it did not look at similar transactions at the time it negotiated for Seasons 5-6, 7 and 8-9 of Bones, Fox argues that the express language of Paragraph 10(b) allows it to look to later transactions. In other words, faced with an undisputed and undeniable breach,

Fox now asserts an interpretation that strains credulity and devoid of common sense. Fox argues that it can look both prospectively and presently – “in the event of any dispute” - to other similar transactions between itself and a third-party to justify what it plainly did not do.

Fox relies on the word “enters” in Paragraph 10(b). However, Fox’s interpretation ignores the words “will be” – “Fox’s transactions with Affiliated Companies will be on monetary terms comparable” This mandatory language does not mean the challenged transaction “was” on comparable monetary terms with third-party deals. Furthermore, “enters” is present tense, not future tense, and plainly refers to other transactions existing at the time of the affiliate transaction when read in conjunction with the promise that the monetary terms of future affiliate transactions “will be comparable” to those of third-party transactions.

Both parties contend that the language of Paragraph 10(b) is not ambiguous. It is well-settled that the interpretation of a contract involves a two-step process whereby the court provisionally receives evidence concerning the parties’ intentions to determine “ambiguity,” i.e. whether the language is “reasonably susceptible” to the interpretation urged by a party. See Wolf v. Superior Court, 114 Cal. App. 4th 1343, 1351 (2004) (describing two-step approach to consideration of extrinsic evidence). It is hardly surprising that Fox argues that the language of Paragraph 10(b) is not ambiguous since the extrinsic evidence from its own witnesses directly contradicts Fox’s interpretation and unequivocally establishes the breach.

In this regard, it is interesting to note that Fox, in both of its closing briefs, distances itself greatly from the testimony of its own witnesses. In fact, the post-hearing briefs submitted resemble a motion for summary adjudication rather than a closing brief. Fox goes to great lengths to ignore the testimony of its witnesses, as it must, since to do otherwise would unquestionably establish the breach Respondents assert.

Mr. Newman testified that TCFTV was looking for the most “objective” standard of dealing possible, so that “*when we make a deal with an affiliated party we’re going to be able to anticipate whether or not we’re opening ourselves up for liability from claims profit participants.*” (7/23/18 Tr. at 2543:17-3545:13.) Mr. Chernin (another high-ranking executive) also confirmed his understanding that the standard “will be applied at the time Fox enters into self-dealing transactions so that [participants] will be paid fairly when the accounting statements arrive.” (7/16/18 Tr. at 1392:5-1394:1, 1482:9-20.) Upon a review of this extrinsic evidence,

the Arbitrator determines that the language of Paragraph 10(b) is not reasonably susceptible to the interpretation proffered by Fox, and no extrinsic evidence is needed to aid in the interpretation of the contract. See Wolf, 114 Cal. App. 4th at 1351 (“If in light of the extrinsic evidence the court decides the language is ‘reasonably susceptible’ to the interpretation urged, the extrinsic evidence is then admitted to aid in the second step – interpreting the contract.”).

According to Fox’s present assertion, the standard of Paragraph 10(b) will only be employed if a particular transaction is challenged. Under this scenario, then, there is no metric by which the Studio and Participants have to measure the fairness of the transaction, no certainty that what the Network indeed agreed to was fair, and no way for the Studio to belatedly bring the transaction into compliance. In fact, under Fox’s construction, a transaction that complies with Paragraph 10(b) at the time of licensing could subsequently become non-compliant if TCFTV’s affiliates thereafter enter into benchmark agreements on more favorable monetary terms. Fox cannot seriously contend that any party, let alone the Studio and Participants, actually agreed to unknown, subsequently occurring “similar transactions” standard to be the controlling standard. This interpretation is illogical and untenable.

Following this assertion that later transactions can be examined, Fox claims that *Bones*’ license fees are comparable to those of *Fringe*. However, having determined that Fox’s interpretation of Paragraph 10(b) is not proper, the Arbitrator does not reach the parties’ arguments regarding the comparability of *Fringe*. Once again, the Arbitrator is somewhat surprised by this latest contention by Fox since *Fringe* *premiered three years after Bones*. As such, its fifth- year license fee could not have been considered at the time of licensing. To state it plainly, *Fringe* was not even in existence at the time the parties were negotiating Seasons 5 & 6 of *Bones*. How could *Fringe* be used for anything in this analysis? It can’t.

With respect to *House*, both parties presented arguments regarding the comparability of *House*. Respondents claim that *House* is the only comparable program to *Bones* since its Seasons 5-8 each preceded *Bones* by one year. However, the evidence shows that Fox did not even request information regarding *House* during the requisite time period.

Ms. Walden stated that she never requested information regarding *House*. (7/16/18 Tr. at 1307:6-15.) Mr. Rice stated that he did not discuss *House* with Mr. Newman or Ms. Walden. (7/13/18 Tr. at 1059:14-1060:4.) Mr. Newman testified that he did not analyze *House* as a

comparable program. (7/23/18 Tr. at 2404:14-19.) He stated that Mr. Kurtzman would have done research, but he didn't know whether Mr. Kurtzman ever asked for any House information. (Id. at 2385:5-8.)

Moreover, Fox erroneously argues that Respondents have not carried their burden to establish a breach of Paragraph 10(b) because they do not properly evaluate Bones and House by taking into account differences in ratings, rankings, advertising revenue, awards and brand impact that affect their relative values and overall profitability. Again, this is not the test – the test is measured by Fox's actions in entering into transactions with Affiliated Companies on comparable monetary terms to transactions with unrelated third-party distributors for comparable programs.

Thus, it is undisputed that the Studio had the contractual obligation set forth in Paragraph 10(b) and simply did not comply. More specifically, this meant that Ms. Walden, Mr. Newman and Mr. Kurtzman were obligated to protect the Participants' interests when negotiating with the Network by ensuring that the license fees for Bones were comparable to the license fees entered into with third parties. This was not done.

Interestingly, both Ms. Walden and Mr. Newman testified that they engaged in tough negotiations and fought for the Participants. However, the evidence belies these assertions. How could they fight if they were not properly armed with the requisite information? What negotiations were there if the information mandated by the contract was not examined, called for or even investigated?

Moreover, additional and troubling evidence reveals that not only did the Studio know that it would be in breach of the "Dealing with Affiliates" provision, but that it sought indemnity from FBC to cover the breach.

On May 6, 2009, Mr. Kurtzman wrote to Mr. Kurgan reminding him that "[REDACTED]" (Respondents Ex. 490.) Similarly, in the later negotiations, there was an email regarding splitting liability of Season 7. (Respondents Ex. 762.) On May 2, 2011, Mr. Kurtzman wrote that TCFTV and FBC "[REDACTED]" (Respondents Ex. 767.) Again, for

Seasons 8-9, there also appears to have been consideration of extending the "[REDACTED]" from Season 7 to Seasons 8-9, though it is unclear whether that occurred. (Respondents Ex 863.)

There is no doubt that the Studio realized that it was not going to win the fight with its affiliate and therefore not only capitulated to the wishes of the Network but also became an accomplice to fraud with respect to the Network's desire to limit both the Studio's and Network's exposure for its breach and failure to negotiate in accord with the operative contractual standards. A breach occurred, was known to have occurred, and was attempted to be papered over by way of a release.

The Release and Fraud

Fox argues that Josephson and Reichs are barred from challenging the license fees for Seasons 5 and 6 since they both signed a release. "In general, a written release extinguishes any obligation covered by the release's terms, provided it has not been obtained by fraud, deception, misrepresentation, duress, or undue influence." Skrbina v. Fleming Companies, 45 Cal. App. 4th 1353, 1366 (1996). However, as argued by Respondents and established at the Hearing, the release was procured by fraud and is a nullity on its face. To prove fraudulent inducement, Josephson and Reichs must prove: (1) a "fraudulent statement" by TCFTV/FBC; (2) that TCFTV/FBC "knew that the representation was not true"; (3) that TCFTV/FBC "made the representation to persuade [Respondents] to agree to the [Release]"; (4) that Respondents "reasonably relied on this representation"; and (5) that Respondents "would not have entered into the contract if [they] had known that the representation was not true." CACI No. 334.³

As a starting point, there is no reasonable dispute that executives and lawyers from both TCFTV and FBC told Participants that Fox would cancel *Bones* unless it received a signed release from *all* Participants. This point is simply incontrovertible.

On May 13, 2009, Josephson got a call from Mr. Newman and Ms. Walden and another call from Mr. Rice saying the show will be cancelled if all Participants do not sign off on the license fee. (Respondents Ex. 2202.) However, Mr. Rice testified that a deal was already in

³ The elements of fraudulent concealment are identical, except instead of making a fraudulent statement, the defendant must have "concealed or suppressed a material fact." Prakashpalan v. Engstrom, Lipscomb & Lack, 223 Cal. App. 4th 1105, 1129 (2014).

place with the Studio to put the show on the air before he called Josephson. (7/13/18 Tr. at 1138:21-1139:5; 1247:20-1248:2.)

On May 15, 2009, Ms. Bowles sends the draft release (“Release”) to all Participants. (Respondents Ex. 2253.) “Participants” is a defined term inclusive of all profit participants, and the Recital provides:

(b) The Participants accept the terms for renewal of the Series for the fifth and sixth production seasons (“Renewal”) as follows: an order for 2 full seasons, the fifth and sixth production seasons, at a license fee of \$2,000,000 per episode. The defined term indicates that all profit participants agree to the terms. The signature page contains lines for all Participants.

(c) The Participants acknowledge that Fox has consulted with them regarding the Renewal and accordingly will not and hereby expressly waive any right to assert any claim in connection with the Renewal, the license fee and Fox’s acceptance thereof, with the exception of claims for the enforcement of the terms and conditions of the Renewal.

As Respondents point out, “Participants” includes Boreanaz and Deschanel, and at the time this document was prepared and signed, Fox knew that Boreanaz and Deschanel were not going to sign the prepared release. Boreanaz and Deschanel did not agree to waive any right to assert any claim in connection with the renewal of the license fee.

On May 15, 2009 (the same date as set forth above), Mr. Sam Bramhall said Participants need to approve the Release that day but have the weekend to execute the release itself. (Fox Ex. 2254.) Ms. Lauren Whitney, Mr. Josephson’s agent, testified that it was made very clear by Mr. Bramhall that the series would not be picked up unless all Participants signed. (7/10/18 Tr. at 426:6-10.)

Again, on May 15, 2009, there was an email exchange between Mr. Newman and Mr. Bramhall. (Respondents Ex. 578.) Mr. Newman knew full well that Boreanaz was not signing. (*Id.*) Interestingly, and contrary to the representations made by Mr. Bramhall to the Participants’ representatives, Mr. Newman took a contrary view and made it clear that he did not care if Boreanaz and Deschanel signed the Release. Yet, Mr. Newman was the very person who called Josephson on this date and told him everybody had to sign. (See also 7/23/18 Tr. at 2467:13-2468: 8.)

Mr. Bramhall was concerned that others would balk if Fox went forward without Boreanaz signing. (Respondents Ex. 578.) Once again, on May 15, 2009, Mr. Bramhall told Boreanaz' representatives good luck in finding Boreanaz another job. (Respondents Ex. 573.) This was either a statement of total dissatisfaction (at best) or a veiled threat of consequences (at worst). There can be no other inferences drawn from such a statement.

On May 16, 2009, Mr. Bramhall tells Ms. Whitney and Mr. Collier, Josephson's attorney, that he "[REDACTED]" and claims that the only changes were "[REDACTED]" and he did not want to open a "[REDACTED]" by putting another version out. (Respondents Ex. 587.) He concludes that "[REDACTED]" (Id.) Again, this is misleading, at best. Mr. Bramhall does not correct the recitals, nor does he remove the signature blocks for Boreanaz and Deschanel. As will be discussed below, the failure to remove the signature blocks is critical.

While Mr. Bramhall claims that he told Whitney and Josephson's representatives that the actors were not signing, this statement is without any documentary proof and stands directly contrary to the testimony from other witnesses and is both troubling and incredulous when juxtaposed with Mr. Rice's testimony below. Nobody corroborates this testimony. (7/10/18 Tr. at 428:12-18, 433:21-434:18 (Whitney); 7/10/18 Tr. at 497:5-498:9 (Collier); 7/25/18 Tr. at 3173:2-3174:10 (Schenkman).)

Unlike Mr. Bramhall, Mr. Rice admits that he knew that Deschanel and Boreanaz were not signing the Release, but he did not tell Josephson or Reichs or instruct anyone to inform them. (7/13/18 Tr. at 1149:17-1150:13.) Both Josephson and Reichs testified that they would not have signed the Release had they known that not all Participants were signing. (7/9/18 Reichs Tr. at 171:8-16; 7/9/18 Josephson Tr. at 272:5-19.) They had no desire to risk cancellation of the Show. Ms. Whitney, agent for both Reichs and Josephson, testified that had she known that Boreanaz and Deschanel were not going to sign the Release, "it would have changed the conversation completely." (7/10/18 Tr. at 440:1-22.)

Notwithstanding the insurmountable evidence that Fox did, in fact, mislead Participants, Fox takes the position that it did not hide anything and the lack of signatures on the Release itself clearly demonstrates that Boreanaz and Deschanel did not sign the Release. Hence, Fox proffers and concludes that the evidence is quite plain, unambiguous and straightforward: *Anyone signing*

would have seen blank signature spaces and could only conclude that someone was not signing. Once again, Fox presents a very troubling argument both in terms of credibility and intent. The mere fact that the copy sent to Josephson and Reichs did not contain all the executed signatures of Participants but did contain the signature blocks for the missing signatories is simply not enough and is quite sophomoric.

As is often the case with a document requiring the signatures of many individuals in various locations, it is signed in counterparts. This is especially true when, as in the case here, signatures are needed in a very short time frame from signatories that are scattered throughout the state or country. In fact, unless the parties are to sign altogether in the same room and at the same time, virtually all transactional matters nowadays are signed in counterparts. This is the rule and not the exception.⁴

Again, as already set forth above, Mr. Bramhall represented that he did not circulate a revised version (which would have clearly shown a deletion of signature blocks for Boreanaz and Deschanel) because, as he stated, only insubstantial changes had been made. But the question that is most critical to this part of the case is the following: *How were Josephson and Reichs to divine that Boreanaz and Deschanel did not sign when they were explicitly told the opposite, and the signature blocks for those individuals still remained on the circulated Release?* The answer is simple. *They could not have known* such a fact from the document itself. To argue or proffer to the contrary is specious.

There was no way to infer such a fact by the document itself since the original version was circulated with signature blocks for all Participants and that version had never been changed or edited to reflect the true state of intentions by Boreanaz and Deschanel. Nor is there any evidence to support Mr. Bramhall's assertion that he had informed their representatives. To the contrary, the executives from the Network and the Studio all stated the opposite. All along, Fox's representation had been that all Participants had to sign, or the show would be cancelled. It

⁴ For the same reasons, Fox's assertion that the fraud claims should be barred by the three-year statute of limitations is without merit. The receipt of an agreement signed in counterparts would hardly put Josephson and Reichs on constructive notice that they had been defrauded.

was safe for the signatories to assume that if Boreanaz and Deschanel were not signing, the Show would be cancelled.⁵

In conjunction with the evidence discussed above, there is an additional disturbing nuance supportive of fraud. Mr. Hart Hanson, the showrunner for *Bones*, was likewise presented with the Release. However, Josephson testified that initially both he and Mr. Hanson spoke of the Release, and Mr. Hanson had expressed his reservations about the document since it clearly impacted each's participation points.

It was clear to Josephson that Mr. Hanson was, in all likelihood, not going to sign the Release. Josephson testified that in their initial conversation(s) Mr. Hanson simply did not want to sign. Yet somehow, as the Network's deadline to sign the release was approaching, Mr. Hanson changed his position and so indicated to Josephson, which undoubtedly, put more pressure on Josephson since not to sign would put many jobs at risk.

While there is no one to refute the testimony of Josephson about these conversations (Mr. Hanson did not testify at the hearing) and while Fox argues that Josephson knew Mr. Hanson was seeking a benefit based on a May 14, 2009 email, wherein he stated that "other participants have and are negotiating to gain" (Ex. 3650-0002), there is one fact that is immutable and cannot be denied. Mr. Hanson, on the eve of signing the Release, received from Fox a new "overall agreement" that was clearly to his liking and was kept hidden from the other Participants.

Respondents argue that the secret Hart Hanson modifications make the language of the Release false. In the Release, the integration clause provides:

No covenants, agreements, representations or warranties of any kind whatsoever have been made by any party hereto with respect to the subject matter of this Agreement, except as specifically set forth in this Agreement.

(Release, ¶ 8.) However, as was revealed at the very end of the Arbitration Hearing, Fox was, in fact, negotiating with Mr. Hanson at this critical time "with respect to the subject matter of this Agreement."

⁵ Another fraud claimed by Respondents is Fox's failure to disclose material changes in the Release regarding deficit recoupment and ranking bonuses. The Release makes no reference to elimination of deficit recoupment and ranking bonuses. (Respondents Exs. 561, 2680.) Ms. Whitney testified that she didn't learn about removal of the deficit recoupment until the Audit Report. (Tr. 7/11/18 at 616:16-617:4.) Similarly, Ms. Felker testified that Bramhall never mentioned the deficit recoupment term going away. (7/11/18 at 616: 6-617:4.)

On May 15, 2009, Jeanne Newman, Mr. Gary Newman's wife, sent an email to Mr. Bramhall stating that Hanson "[REDACTED]" (Respondents Ex. 566; see also Respondents Ex. 1483.) To reiterate, Mr. Gary Newman was co-president of TCFTV. After claiming privacy and objecting to producing this document throughout the Arbitration, Respondents finally produced Hanson's Overall Amendment dated May 18, 2009. This is the very same date that Hanson and Josephson signed the Release. There is no doubt that Mr. Hanson's Overall Amendment violated Paragraph 8 of the Release.

It is clear that Fox had no intention of cancelling Bones. It could not proceed without the creator, writer and producer of the Show. It had no choice but to agree to Mr. Hanson's "[REDACTED]" in order to get him to agree to the Release language which, in turn, would set in motion an assurance for the signatures of both Josephson and Reichs. Hence, another critical, yet rhetorical question which highlights this point is: *Why would the Network and Studio go to all the trouble of negotiating a new deal with its showrunner and at the same time make sure that the creator and producer signed a release if the show was truly going to be cancelled?*

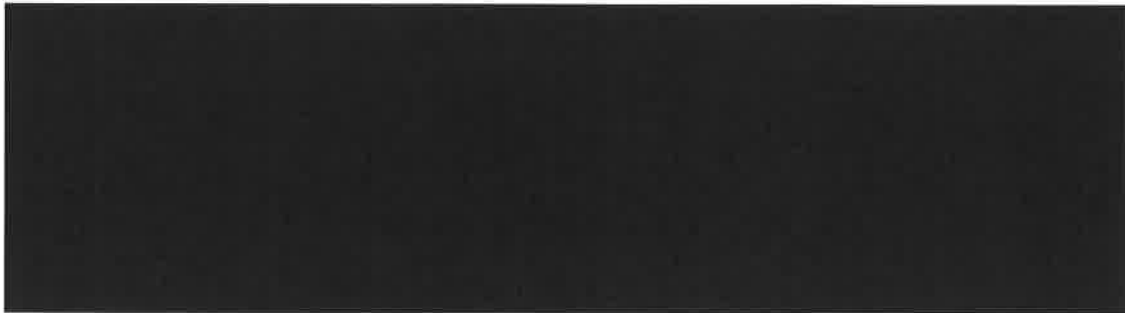
The answer is self-evident: The show was not going to be cancelled and there never was an intent to do so. The intent was to continue with the show and at the same time bar any chance for a lawsuit to be brought.

In addition to all of the above, it needs to be pointed out and likewise asked: Why is Fox the Network requesting releases from Participants who have no contractual relationship with it? There is no privity between the Network and Participants and the contractual obligations set forth in the Agreements run only between the Studio and Participants. In a vertically integrated set up between the Studio and the Network, the release became essential so as to continue on with the Show and likewise eliminate any potential liability previously discussed.

It is convenient, coincidental and suspicious that Fox entered into a last-minute overall deal with Mr. Hanson that was not disclosed to the other Participants. In fact, this new overall agreement was not disclosed until the actual arbitration hearing was underway and only upon the issuance of an order from the Arbitrator. All inferences point to a false, hidden and duplicative scenario being presented by Fox.

As a result of the above, Respondents argue that the threat to cancel Bones was fraudulent in and of itself and was the actual launch point for the fraud. To evidence and support this, the Studio, on January 10, 2008, made a presentation of Bones when they were attempting to syndicate the show. (Respondents Ex. 287.). The presentation is quite telling because the Studio sets forth compelling data and reasons as to why the show should continue and clearly establishes the basis as to why Fox had no intent to cancel the show.

In this presentation, Bones was portrayed as the darling of the Network and not the middling show with middling ratings that every Fox witness testified to at the Arbitration hearing.



As the evidence progresses from this point in time, it is revealed that no one seriously contemplated cancelling the Show. For example,

- On January 5, 2009, Mr. Ligouri wrote in an email that Bones, along with Idol and House, were being used to launch new shows. (Respondents Ex. 413.)
- On January 13, 2009, an FBC internal email, copying Kurgan, Ligouri and Beckman, states that Bones is the only show on entire network with an upward trajectory. (Respondents Ex. 419.)
- Mr. Reilly, President of the Network, admits that it “would be highly unusual” not to pick up a show that was on an upward trajectory, and he could not think of a single example where it happened. (7/26/18 Tr. at 3317:22-3318:2.)
- On March 3, 2009, Mr. Reilly sent an email to Mr. Rice regarding discussion of a three season pick up. (Respondents Ex. 457.)
- This would not have been discussed if the Show was being cancelled. (Reilly Tr. 7/26/18 at 3256: 2-22.)
- On March 20, 2009, Mr. Beckman explained to Mr. Rice that Bones is a “[REDACTED]” (Respondents Ex. 449.)

- On March 24, 2009, the Network orders six scripts for Season 5, noting the series has boosted Thursday 18-49 age group by 43%. (Respondents Ex. 451.)
- On May 6, 2009, a Bones presentation took place. Among many glowing statements, it states: “[REDACTED]”
“[REDACTED]” (Respondents Ex. 510.)
- On May 7, 2009, which is the same day FBC sends the cancellation letter, Kurgan and Beckman exchange emails discussing whether Bones will air on Thursday or move to Friday and noting that Bones will stay on Thursday due to sales success. (Respondents Ex. 531.)
- Mr. Kurgan testified that he has no recollection, despite the May 7 letter, of any discussion of replacing Bones with another show (7/18/18 Tr. at 1882: 2-5) or about actually cancelling Bones (Id. at 1921:16-18.).
- On May 13, 2009, Mr. Acosta tells Norma Ceres, “[REDACTED]” which is the no-Bones version. (Respondents Ex. 2208.)
- Ms. Ceres emails the team “[REDACTED]” which is the version with Bones. (Respondents Ex. 549.)
- Mr. Acosta acknowledges that he must have been told by Rice or Kurgan that there was an affirmative decision to go with Bones as of May 13, 2009. (8/7/18 Tr. at 3958:24-3960:14.)
- On May 13, 2009, Mr. Rice tells Earley to book Deschanel’s upfront travel, after Earley says, “[REDACTED]” (Respondents Ex. 548.)

Finally, Respondents point to another exhibit that was presented at the last minute. This exhibit (Exhibit 1456) shows that American Dad, which was in the Ligouri memo, was picked up at [REDACTED] for ’08-’09, ’09-’10, ’10-’11, ’11-’12, and ’12-’13. In every single one of those years, Bones’ rankings were superior. (Id.)

When viewed in totality, the evidence surrounding the Release, from its inception and design to its presentation to Participants, supports a finding of fraud with the intent to get Participants to sign off on their points and at the same time preclude litigation and Participant leakage. Bones was not going to be cancelled, and the Release was procured through a series of

misrepresentations and fraudulent conduct that, in reality, had the Participants known the true facts, they would not have signed since to do so would have cut off their back-end points. The only parties to have gained from the Release were the Studio and the Network, which in a non-vertically integrated world would never have happened.

Accordingly, the Release is void ab initio. The Arbitrator finds that Respondents have established their claims for breach of contract and fraud.

IV.

INTENTIONAL INTERFERENCE WITH PARTICIPANTS' AGREEMENTS

Respondents claim that the conduct of FBC, FEG and 21CF concerning the license negotiations and the Release constitute intentional interference with the Participants' agreements with TCFTV. To establish a tortious interference claim, a plaintiff must prove: (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage. Pacific Gas & Electric Co. v. Bear Stearns & Co., 50 Cal. 3d 1118, 1126 (1990). The elements of inducement of breach of contract require an actual breach. See Contemporary Invs., Inc. v. Safeco Title Ins. Co., 145 Cal. App. 3d 999, 1002 (1983).

The Arbitrator once again finds and concludes that the facts presented at the Hearing meet these elements. Specifically, the "Legal Action Plan" and the Release support intentional interference by the Network and FEG/21CF.

The Legal Action Plan

On January 12, 2009, Mr. Ligouri sent an email to Mr. Chernin, the Chairman and CEO of the network, referencing "[REDACTED]" (Respondents Ex. 417A.) He states that "[REDACTED]" (Id.) He then outlines the "Issue," including: "[REDACTED]" (Id.) This reflects his knowledge that the Studio has

agreements with Participants that will be affected. As a result, Mr. Ligouri outlines “Next Steps:”

[REDACTED]

(Id.)

In response, Mr. Chernin forwarded this email to Mr. Gelfan stating, “[REDACTED]

[REDACTED]” (Id.) Mr. Chernin also copied this email to Studio executives, including Ms. Walden, Mr. Newman and Mr. Kurtzman. (Id.) When asked why he forwarded this email to both the Network and the Studio, Mr. Chernin replied:

Because I, I read Mr. Ligouri’s thing, it sounded like there were issues coming to these intercompany license fees, specifically, and I wanted to make sure that my directives were being listened to,

I wanted everybody to figure out a way to have these negotiations, to do the best they could for their individual divisions, to honor the profit participants, and have us pay market, market-level license fees.

(7/16/18 Tr. at 1401:12-1402:1.) Nonetheless, when asked why the Studio, Network and Parent were involved in this memo, Mr. Rice testified that he thought it was “unusual.” (7/13/18 Tr. at 1009:4-18). Mr. Kurtzman stated he thought it was “odd.” (7/12/18 Tr. at 890:15-891: 6.)

On January 13, 2009, two days after this directive from Chernin, Mr. Barron of the Finance Department ran an analysis calculating the effect on TCFTV’s profitability for Season 5 of Bones of: (1) full-cost license fees (based on the then-estimated cost of production of \$ [REDACTED] million/episode), which would have resulted in over \$ [REDACTED] million in payments to Participants; (2) the “TCFTV Breakeven” license fee – the lowest license fee TCFTV could receive without incurring any losses – of \$ [REDACTED] episode; and (3) the “Participant Breakeven” license fee – the highest license fee TCFTV could receive without triggering any leakage to Participants – calculated as \$ [REDACTED] million/episode. (Respondents Ex. 418; 8/13/18 Tr. at 5148:7-21, 5149:20-24; 5150:13-21, 5151:2-5153:4 (Barron).) Interestingly, the Participant Breakeven license fee is virtually identical to the \$2 million/episode license fee that TCFTV and FBC eventually agreed to for Seasons 5-6 of Bones. (8/13/18 Tr. at 5153:5-24 (Barron).)

Other evidence reveals that the Network was aware of the Studio's contractual duty to Participants. On January 23, 2009, Mr. Gelfan reached out to Mr. Kurtzman, Mr. Kurgan, Mr. Kender and Mr. Chernin regarding a meeting on 5th year license fees for Bones and American Dad, "[REDACTED]" (Respondents Ex. 424A.) On April 3, 2009, Mr. Acosta asked Mr. Mayberry whether the parent is up to speed on the Bones license fee issue, and Mr. Mayberry responds, "[REDACTED]" (Respondents Ex. 456.) On May 6, 2009, Mr. Kurtzman and Mr. Kurgan had an email exchange regarding their discussions of whether the Network had made an offer to the Studio regarding Bones. (Respondents Ex. 490.) The discussions included splitting liability to the Participants "[REDACTED]" (*Id.*) Mr. Kurtzman could not think of other shows between the Network and the Studio wherein the Network floated the idea to cover the participants' claims. (7/12/18 Tr. at 929:10-930:6, 959:1-961:4.)

Finally, Mr. Newman was asked whether he took any measures to try to build leverage in his negotiations with the Network. He responded:

Yes. We did everything that we knew how to do, from threatening to take the show to other networks to quoting him deals that other networks were paying, Ghost Whisperer being at the time the most recent deal. You know, telling him he was going to end up getting us sued by the participants because the license fee wouldn't stand up to the standard of dealing.

(7/23/18 Tr. at 2597: 2-14.)

Despite full knowledge of the terms of the license agreement and Bones' relatively strong performance, there is no indication that anyone from TCFTV ever asked FBC to renew Bones under those terms – even though there was no precedent for FBC paying anything less than full-cost license fees with deficit recoupment and rankings bonuses to any third-party studio for any series licensed for Season 5 or beyond. (7/17/18 Tr. at 1538:23-1543:15 (Walden); 7/18/18 Tr. at 1856:23-1859:5 (Kurgan); 7/23/18 Tr. 2441:23-2443:2, 2457:23-2459:7, 2594:19-2595:15 (Newman); 7/26/18 Tr. 3333:11-15 (Younger).) Indeed, Walden was aware that "the network was setting a new precedent," that "there were different terms that the network was trying to create, a different deal they were trying to create on the fifth season of Bones." (7/17/18 Tr. at 1541:12-20, 1542:6-1543:11, 1646:25-1647:6.)

This can only be explained by the fact that FBC and 21CF/FEG sought to induce TCFTV to accept license fees that were inconsistent with Paragraph 10(b) and FBC's custom, and they knew that entering into below-market licensing agreements with TCFTV was "certain or substantially certain" to cause interference or disruption of Respondents' expectations under their contracts with TCFTV.

Fox attempts to argue that Mr. Liguori's "legal action plan" email is "ultimately innocuous." However, Fox's own actions surrounding this email belies its argument. Fox originally produced this document in redacted form, and then during the first week of Arbitration and after a warning from the Arbitrator, it produced the unredacted document. Further, it should be noted that shortly after Mr. Liguori's Legal Action Plan memo in 2009, Mr. Liguori left Fox and Mr. Peter Rice stepped to be Mr. Liguori's replacement. Somehow, Mr. Liguori does not surface again on Fox's radar until just after January of 2018.

For some reason, Fox now takes another look at Mr. Liguori and believes they need his talent as a producer. This quizzical interest leads to a "First Look Agreement" between FX (a Fox affiliate) and Mr. Liguori. However, this document is never produced and during Mr. Liguori's first trip to the witness box is never mentioned. Yet, near the conclusion of the Arbitration hearing, the Liguori "First Look Agreement" was revealed.

In this First Look Agreement, FX provided Liguori with [REDACTED] [REDACTED] and fixed episodic fees and contingent compensation far exceeding that of top executive producers in Hollywood. (Ex. 1454; 8/9/18 Tr. at 4605:20-4620:4 (Cline).) Why and how did this come about? Mr. Liguori had virtually no experience whatsoever as a Producer, yet the First Look Agreement, when compared to those of top producers in Hollywood, rivals those and in some instances surpasses those deals.

FX President John Landgraf, who reports to Mr. Rice, directed his head of business affairs to make this unprecedented deal with Liguori right after January 1, 2018 (8/9/18 Tr. at 4563:21-4564:10, 4637:21-24 (Cline)), while Respondents' motion to compel production of the

Ligouri memo and related documents was pending.⁶ Despite the fact that [REDACTED]
[REDACTED] FX apparently issued no press release reporting its deal with Ligouri. (8/9/18 Tr. at 4616:7-4617:23 (Cline).)

When viewed in light of these circumstances, the Ligouri “legal action plan” is far from innocuous. If one juxtaposes the First Look Agreement with Mr. Liguori’s testimony at the hearing (wherein he downplays the significance of the plan itself), it seems coincidental that Mr. Liguori disappears for 9 years (from Fox’s radar) and then magically reappears with a First Look Agreement 7 months before he is to testify in these proceedings with a deal in hand that most producers in Hollywood have strived to have their entire entertainment career.

The contents of the Legal Action Plan were followed by both the Studio and the Network from January 2009 through May 2009, and the conduct of each clearly reflects the key components of that plan.

The Release in Relation to the Intentional Interference Claim

Respondents also argue that the evidence surrounding the Release supports intentional interference. Mr. Rice testified that the Release was his idea. (7/13/1 Tr. at 1123:17-1124:7; 1218:14-20.) He claimed that he suggested the Release because he had conversations in which concerns about liability to Participants came up. (7/13/18 Tr. at 1029:21-1031:9.) Specifically, he stated, “I think I must have had conversations about potential liability because that must -- that was my motivation for asking for the release to be signed.” (*Id.*) This begs the question of why Mr. Rice would be concerned about the Studio’s liability to Participants.

In an email exchange between Mr. Kurgan and Mr. Kurtzman, Mr. Kurgan actually suggests to “[REDACTED]” (Respondents Ex. 2152.) Then, on May 7, 2009, Ms. Minna Taylor sent a letter to Mr. Kurtzman which stated:

[REDACTED]

⁶ The Agreement itself is dated three days after Fox agreed to produce the redacted version of the Ligouri memo and related documents. (Ex. 1607; Ex. 1606-0011-12.)

(Respondents Ex. 518.) During the testimony, this became known as the “cancellation letter” and was shown to be highly unusual, to say the least. Mr. Newman testified that this letter was unprecedented in his career. (7/23/18 Tr. at 2432:7-17.) Ms. Walden testified that she had never seen a letter like it before in her career. (7/16/18 Tr. at 1353:12-21.)

Clearly, an unaffiliated network would not have needed to send this letter because cancellation would have occurred by telling the studio that the show would not be renewed or by allowing the option deadline to expire. Here, however, this unprecedented letter was part of the legal action plan.

The sharing of this “legal action plan” between the Studio and the Network evidences the beginning of the Network’s process to ensure the Show continued at less than a full-cost of production license fee. When it received the legal action plan memo, the Studio should have realized that the Network had no intention of paying a full-cost of production license. The Network suggested the Release, but it was the Studio’s contractual exposure to Participants, not the Network’s. The Network had no privity with the Participants with any contractual agreements.

So why is the Network interested in a release that could only be between the Studio and its talent? For example, if NBC network was negotiating with TCFTV about a license fee, why would NBC be interested in making sure the participants of the show issue some sort of contractual waiver or release of claims? The answer is they would not. However, if the Studio and the Network are integrated (as is the case here) then the conflict and the reasons therefor become obvious.

Moreover, it is unclear why Mr. Rice made the phone call to Josephson about the Release when it was the Studio’s responsibility to look out for its participants. An unaffiliated network would never have an interest in a contract between talent and the studio, and certainly, it would not seek a release from the talent or speak to talent about such a document. To reiterate, there is simply no privity between the participants and the network. An unaffiliated studio would have no interest or reason to seek a release from its talent. It would present the following options to its participants:

(1) they can proceed with a less than full-cost license knowing that their backend points would be delayed;

(2) inform them that the network is seeking a release, and they can decide what they want to do; or

(3) negotiate hard with the network as to the license fee and actually represent the participants.

However, here, the Studio knew in January 2009 that the Network was not going to pay the full cost of production license. Yet, as alluded to above with respect to the breach of contract claim, the Studio not only failed to apply the standard set forth in the Agreement, but it also failed to zealously negotiate on behalf of its Participants. As the evidence developed, it became difficult to distinguish between the actions of the Studio and the Network.

Thus, the Arbitrator determines that both the “legal action plan”—originated by FBC—and FBC’s origination of the Release make abundantly clear that FBC and 21CF pulled the strings and guided the sham “renegotiations” of the Bones license agreement to the detriment of the Series’ license fees and Respondents’ profit participation interests.

The Arbitrator finds Respondents have established their claim for intentional interference with contract and are entitled to recovery on this claim.

V.

BREACH OF PARTICIPANTS’ AGREEMENTS BASED ON THE INTERNATIONAL TRANSACTIONS

The same Paragraph 10(b) standard applies equally in the international marketplace, and Respondents allege breaches of Paragraph 10(b) with respect to TCFTV licensing of Bones to foreign affiliates. Specifically, Respondents claim that TCFTV breached the Agreements in the United Kingdom, Italy, Spain and other territories. As set forth below, the Arbitrator agrees with Respondents regarding the U.K, Spain and Italy but finds that Respondents have not established their claim regarding the other territories.

United Kingdom

Similar to the analysis set forth above with respect to the domestic licensing, TCFTV never complied with Paragraph 10(b) with respect to the international licensing of Bones.

Mr. Scott Gregg, Executive Vice President of Strategic Operations for TCFTV Distribution, testified, “We do not look at third-party studio agreements with Sky or other affiliates, and we do not ask for them.” (7/19/18 Tr. at 2072:19-2073:9; 2074:19-2075:13; 2128:9-2129:11.) He stated that there were no discussions of how a negotiator would comply with Paragraph 10(b). (*Id.* at 2070: 12-19.) Mr. Gregg testified that TCFTV determined its license fees based on TCFTV’s historical licensing practices in territories, not the affiliate’s historical licensing practices, and he admitted that TCFTV’s practice was inconsistent with the plain language of the standard set forth in the ATP. (*Id.* at 2070:12-19, 2072: 19-2073:11, 2128:18-2129:11.)

Similarly, Mr. Londono, COO of Fox Networks Group Europe and Africa, testified that he had no knowledge of the Paragraph 10(b) language, and that he had never seen the standard. (7/24/18 Tr. at 2665:9-2666:7.) He stated that he never provided agreements to the Studio. (*Id.* at 2666:24-2667:20.) Mr. Londono testified that it would be difficult to find comparable programs, and that no one at the affiliated networks was ever told the agreements with the Studio needed to be on comparable terms to unaffiliated deals. (*Id.* at 2667:21-2668:10.)

Fox argues that Respondents fail to satisfy Paragraph 10(b) because there is no evidence of third-party deals with BSkyB. It asserts that because Respondents made no effort to obtain such third-party deals, no third-party license agreements with BSkyB are in the record, and therefore, Respondents have not met their burden.

Fox’s argument turns the standard of Paragraph 10(b) on its head. To begin with, TCFTV is the party that promised to comply with Paragraph 10(b) in exchange for Respondents’ waiver of any right to challenge TCFTV’s ability to license to its affiliates, thereby making it TCFTV’s duty to obtain the comparable information in order to comply. However, as testified to by its own employees, the key negotiators were not even aware of the standard or their obligations under Paragraph 10(b). Moreover, as stated above with respect to the domestic licenses, Fox was contractually obligated to meet this standard at the time it entered into the

license agreements with the affiliated studios. It therefore makes absolutely no sense for Fox to argue that Respondents have not met their burden because Respondents did not seek third-party deals at this time.

Spain and Italy

Similar to the U.K., TCFTV's negotiators made no effort to comply with Paragraph 10(b) with respect to licensing in Italy and Spain. They did not request the Fox-affiliated networks' agreements with unaffiliated studios, and never inquired about what the Fox-affiliated networks were paying unaffiliated studios for comparable programs. (7/19/18 Tr. at 2122:18-21, 2123:15-2124:1 (Gregg); 7/24/18 Tr. at 2665:12-2666:7, 2667:7-20, 2668:4-10 (Londono).)

Other Territories

In their Post-Hearing Liability Brief, Respondents appear to specify the "other territories" as Latin America. Regardless, Respondents' international claim(s) concerning the remainder of territories fails as it is based on an extrapolation analysis. This extrapolation, based on the United Kingdom, Italy and Spain, when applied to the remainder of territories is too speculative to serve as the basis for an award of damages.

As Fox argues, extrapolation is not compatible with a Paragraph 10(b) claim which requires Respondents to make an evidentiary showing with respect to each territory. This is true for both a breach and damages. With respect to the latter, the evidence showed that each international market is unique; the buying practices and patterns in one territory cannot be used as a proxy for the buying practices and patterns in another. (7/19/18 Tr. at 2149:5-17 (Gregg); 7/24/18 Tr. at 2634:12-16 (Londono); Cornish Tr. at 4163:4-11; Ex. 3626-0006.) Many factors affect the level and range of pricing and vary from territory to territory. Economies, competitive conditions, licensing structures, and market interest in U.S. content all vary. (*Id.*) As such, the Arbitrator cannot find a breach regarding the licensing in the remainder of the territories.

MundoFox

Respondents appear to have abandoned their MundoFox claim, recognizing that the testimony was in conflict. Steve McDonald testified that he personally called Telemundo, TeleFutura and Univision. (7/16/18 Tr. at 1696:2-6.) Ms. Anjelica Cohn testified that she spoke

to Diana Mogollan and Flavio Morales, the two executives at mun2, and these two said that they had not been contacted about Bones, would have been interested, and would have paid \$50,000. (Cohn Tr. at 2044:3-2047:24.) However, Ms. Mogollan and Mr. Morales both testified that they never spoke to Ms. Cohn about Bones, would not have been interested, and could not have afforded to pay anywhere near \$50,000 for it. (Mogollan Tr. at 4481:15-4482:24; Morales Tr. at 4500:1-4501:25.)

Given this conflicting testimony and with the absence of any other testimony or proof, Respondents have not established their claim as it pertains to MundoFox.

VI.

CLAIMS BASED ON FOX'S LICENSING ARRANGEMENTS WITH HULU

Respondents also allege that Fox breached the Participant Agreements through its licensing arrangements with Hulu. They argue that although FEG earned over \$[REDACTED] million from licensing Bones to Hulu, it passed less than \$[REDACTED] million on to profit Participants, choosing instead to minimize "leakage" by ensuring that 100% of revenue from full current-season streaming rights was funneled to FBC, even though TCFTV had never licensed those rights to FBC and, thus, retained the right to those revenues. Respondents contend that the same sweetheart agreements also dramatically undervalued both past and current-season rights to Bones.

Initial Inquiry: Ownership Rights

Respondents argue that TCFTV is, and at all relevant times was, the copyright owner of Bones. Inexplicably, though, TCFTV permitted parent company FEG, which had no streaming rights, to exploit those rights anyway—and to give nearly all of the revenue from that exploitation to FBC so that this revenue would not be shared with Respondents. Respondents conclude that TCFV's decision to license to Hulu rights worth at least [REDACTED], without receiving any of that consideration for itself, was a clear breach of its obligation to distribute the series "in good faith." (Ex. 54, ¶ 10(a).) And further, the implied covenant of good faith and fair dealing mandates that TCFTV act in good faith toward profit Participants in the licensing process.

The preliminary question is whether there was an agreement wherein the Network was given the right to exploit Bones by the Studio. To begin with, testimony from both the Studio and FBC is consistent that the Studio was the copyright owner for Bones, and FBC could obtain the digital rights only through a grant of those rights from the Studio. (7/18/18 Tr. at 1922:25-1923:11 (Kurgan); 7/12/18 Tr. at 948:2-11 (Kurtzman); 7/24/18 Tr. at 2678:14-19 (Pearson).) Next, it is clear that there was no written agreement between the Studio and the Network concerning the digital rights to Bones. (7/24/18 Tr. at 2692:11-15 (Pearson); 7/12/18 Tr. at 879:11-18 (Kurtzman); 7/23/18 Tr. at 2493:7-13, 23-25 (Newman).) The question, then, is how did the Studio give full current-season stacking rights to the Network?

To understand the arguments between the parties with respect to these digital rights discussed above, one needs to start with what Fox represented in its Opening Statement:⁷

So there was a deal struck between the Network and the Studio and in this deal they traded off rights. The Network got in-season streaming, meaning the same year that they put the show on TV they could also put it on Hulu and get the revenue stream from that. The Studio got something arguably even more valuable; they got to pierce into this four-year window and sell DVDs earlier, sell re-runs into syndication earlier than the four years, and sell out-of-season episodes earlier than they otherwise would have in this four-year window.

(7/9/19 Tr. at 147:18-148:2.) The Arbitrator asked counsel when this deal, which was represented as an “oral deal,” was cut, and the response was “2008/2007.” (Id. at 148:10-25.) However, Mr. Pearson’s testimony at the hearing (the witness that all Fox witnesses pointed to as the person most knowledgeable in this regard) was that this alleged “deal” was struck in 2010.⁸

Specifically, Mr. Pearson testified as follows:

Q: Now, did you testify at your deposition that with respect to digital rights, not just this more narrow full current season, all digital rights, “hard to say we ever had an understanding, we had an ongoing dialogue.” Do you remember giving that testimony?

A: Yes.

Q: And was that truthful testimony?

⁷ The Arbitrator is fully aware that opening statements are not evidence. However, Fox’s position with respect to these digital rights has been extremely difficult to follow since it has been somewhat of a moving target. To evaluate Fox’s oft times shifting arguments it is necessary to understand what its own counsel represented at the outset of the hearings before testimony was taken under oath.

⁸ This differed from his deposition testimony.

A: Yes.

(7/24/18 Tr. at 2712:4-11.)

Once again, a pause here is required to acknowledge that Fox witnesses, including the heads of the Studio and Network, testified that they did not know about a digital rights agreement, but that Mark Pearson was the person who would know. Indeed, Mr. Kurtzman, Mr. Newman and Mr. Kurgan, among others, all deferred to Mr. Pearson, who Mr. Chernin identified as “a middle-level strategy guy for the television studio.” (7/16/18 Tr. at 1432:3-6.)

At the hearing, Mr. Pearson, who testified at his deposition that as late as May 2014 he did not believe there was an agreement that FBC would possess the current in-season rights to Bones, claimed to recall an “understanding:”

A: I’m recalling now specificity as it relates to that exploitation on Hulu Plus, that that was part of the proposal, and that in fall of 2010 Hulu Plus was to launch and the network needed those rights to satisfy Hulu Plus.

Q: So you’re now recalling that specificity. When did you first recall it? Was it right here on the stand or was it sometime in between your deposition and now?


A: It was right here on the stand when I looked at that timeline and started scrawling some notes, and I made a note to myself 2010 Hulu Plus launch.

...

Q: This is important for this case. You referred to that as an agreement when you made your line. Do you want to stick with this being an agreement or is it something different?

A: As I said, I’m not an attorney and I don’t understand the legal difference between what an agreement is and what an understanding is. I think it was an understanding and not an agreement, so if I can at this point in time go back and mark it with a green marker, that’s what I would do.

(Id. at 2709:10-25, 2710:20-23, 2711:5-14.)

Mr. Pearson confirmed his testimony that in 2010 there was an understanding with respect to Bones that the Network would get full-season stacking rights for Hulu Plus going forward for the 2010/2011 season. (Id. at 2706:15-21.) However, this testimony was impeached by other testimony showing that the Studio, after 2010, continued to assert that there was no digital rights agreement and that it was reserving its right. According to an email written by Mr. Kurtzman on April 28, 2014 and confirmed by him in his testimony, “

[REDACTED] (Respondents Ex. 1075; 7/12/18 Tr. at 875:1-16.)

On May 1, 2010, Ms. Harris wrote an email to Mr. Kurtzman stating that FBC is currently seeking full stack rights for Hulu Plus subscribers on all of its licensed series going forward. (Respondents Ex. 1075.) Mr. Kurtzman responded that "[REDACTED]

[REDACTED] (Respondents Ex. 1075.) Mr. Kurtzman again confirmed this in his testimony at the hearing. On the Network side, Mr. Kurgan confirmed that at least as of May 1, 2014, there was no [REDACTED] (7/18/18 Tr. at 1930:6-9.)

Next, an examination of Mr. Pearson's claim of what the Studio received in exchange for the digital rights is required. Mr. Pearson stated:

So what the studio got in return for giving the network expanded digital rights for full stacking, the studio got 30-day, prior to subsequent premier, SVOD rights, the studio got early repurposing, early syndication rights.

(7/24/18 Tr. at 2696:11-15.)

Again, however, this testimony is impeached because the Studio already had been exploiting these rights. Mr. Pearson confirmed that in 2008 Bones was licensed to Turner in early repurpose which was more than two years before he claims the Studio had the right to license that early repurpose, and also that the Studio licensed the syndication rights to Turner before he claims the Studio had right to do so. (7/24/18 Tr. at 2728:13-2729:5.) Mr. Barron confirmed the Studio did not need early syndication because it was already syndicated. (8/13/18 Tr. at 5218:15-22.) Finally, with respect to the past-season SVOD rights, Mr. Pearson confirmed that under the Netflix deal, which was entered into prior to June 2010, the Studio already had the right to license those past-season rights. (7/24/18 Tr. at 2729:13-23.)

After confirming that the Studio was already exploiting all the rights related to all of the consideration that it purportedly received in return for giving the Network the Hulu SVOD rights, Mr. Pearson was asked what the Studio got in return for giving these rights to the Network. Incredibly, Mr. Pearson stated, "We got their agreement that we would be able to continue to do that." (7/24/18 Tr. at 2732:25-2733:7.) Mr. Pearson first testified at his

deposition that there never was any understanding between FBC and TCFTV about any Bones digital rights. Then, at this Hearing, after all other witnesses claimed that Mr. Pearson was the person who would know about the digital rights, Mr. Pearson recalled, at that moment, the understanding discussed above.

Simply stated, the Studio did not get those early syndication and past-season SVOD rights in exchange for full current-season stacking. If one were to ask why, the answer would be simple: Because the Studio already had them and were exploiting them. Hence, it received no consideration in exchange for the purported digital rights trade-offs. Moreover, no exhibit, emails, or other documentary evidence was shown to support Mr. Pearson's testimony. Only the impeached testimony of Mr. Pearson himself is the support for this alleged agreement. More specifically, Mr. Pearson had to impeach himself to arrive at some purported understanding. In a few words, the Arbitrator finds Fox's position in this regard to be patently absurd.

Based on the evidence presented, the Arbitrator finds no agreement between the Studio and the Network giving the Network current in-season streaming rights.

Fox argues that the Studio's granting to FBC of certain in-season new media rights was "comparable" under the Distribution Controls Paragraph. It claims that the Network's deal with the Studio in terms of the exchange of digital rights was the same deal the Network had with third-party studios such as NBC Universal and WB. However, again no evidence was presented of any third-party studio granting full current-season stacking rights to FBC. Mr. Kurgan testified that [REDACTED]

[REDACTED] (7/18/18 Tr. at 2005:6-8; 1007:24-2998:1.)

Accordingly, Respondents have established that TCFTV breached the Participants' Agreements by permitting FEG to grant Hulu full current-season stacking rights, which no unaffiliated third-party studio had ever granted to FBC, and receiving no consideration, and instead allowing that consideration to be directed to FBC and keeping the \$70,690,961 out of the Participants "Gross Receipts."

Breach of Agreements Based on Self-dealing

Respondents argue that the [REDACTED] FBC received from the Hulu licensing agreement for Bones was artificially deflated as a result of self-dealing between Fox and its affiliate Hulu,

because those deals were based on a share of speculative advertising revenue that no third-party distributor has agreed to when licensing a premium scripted television series to Hulu.

Respondents assert that with respect to past-season episodes (episodes from seasons not currently airing), FEG licensed at least the entire first season of *Bones* to Hulu Classic from 2008-2010 in exchange for a highly speculative [REDACTED] share of advertising revenue with no minimum guarantee.

Mr. Chernin testified that when the [REDACTED] split was agreed to with Hulu, Fox had no idea what the ad revenues would look like that it might later receive from Hulu. (7/16/18 Tr. at 1459:19-23.) He stated that the terms were based on calculating what was needed to keep Hulu at breakeven (meaning viable). (7/16/18 Tr. at 1458:4-20.) The deal was negotiated between the joint venture partners, Fox and NBC, and there was no third party to negotiate. (7/24/18 Tr. 2826:19-24.) Ms. Zigler testified how a third party dealing at arm's length would have arrived at the monetary terms of the Hulu content license agreements: by negotiating a fixed license fee that was commensurate with the exploitation of their content. (7/25/18 Tr. 2901:12-18.)

However, Ms. Brennan, Fox's PMK regarding the Hulu deals, testified that FEG did not even discuss the possibility of getting fixed episodic license fees, or any minimum guarantee, in return for licensing its content to Hulu. (7/24/18 Tr. 2832:21-2833:4.) Mr. Chernin did not recall anyone ever looking into the question of whether the [REDACTED] ad revenue split was reasonable within the industry. (7/16/18 Tr. 1460:13-17.) Indeed, when the Arbitrator asked Mr. Chernin where the negotiation aspect of this deal was, Mr. Chernin responded, "I don't, I don't know whether the agreement reflects negotiations or not." (7/16/18 Tr. at 1447:18-25.)

Neither of Fox's experts was aware of any third party who had been willing to license content to Hulu for a share of ad revenue. (See Wunderlich Testimony, 8/10/18 Tr. 4930:23-4913:4; Homonoff Testimony, 8/8/18 Tr. 4412:22-4413:1.) So, when Fox contends that there is no evidence of a better deal struck by another studio in terms of the percentage of ad revenue, this is true because *no other studio would make such a deal based on the percentage of ad revenue.*

Fox agreed to the same [REDACTED] ad revenue split for the full current-season stacking rights for *Bones* Seasons 6 through 12 to Hulu Plus. There was no evidence that these rights had ever been licensed to any third-party streaming platform at any price. Indeed, no witness or expert

was aware of any third-party studio licensing full current-season stacking rights for any scripted drama to FBC or Hulu. Thus, it seems that Fox was able to license the current-season stacking rights of Bones to Hulu because Hulu was a Fox affiliate.

In addition to all of the above, the Arbitrator now addresses perhaps the most shocking piece of evidence related to the Hulu issues, which is the Fox Content License Agreement itself. Fox actually signed both sides of this agreement. Mr. Dan Fawcett signed the Fox Content License Agreement on behalf of both FEG and Hulu. (Respondents Ex. 278.)

The signature page represents that Mr. Fawcett was President, Digital Media, of FEG and at the same time he was Vice President of Hulu. This puzzle was never resolved at the Arbitration Hearing since Mr. Fawcett was not called by Fox, and Respondents stated that he could not be found since they had no idea where he could be located. When Mr. Chernin was asked how this was possible (meaning a Fox representative signing on behalf of both parties), he replied *"I have no idea."* (7/16/18 Tr. at 1447:18-25.)

Indeed, the self-dealing analysis is hardly surprising considering that the Fox/FEG executive who negotiated and agreed to the original [REDACTED] ad revenue split was also representing Hulu's interests at the time. As already stated above, Mr. Fawcett literally signed the agreement for both parties in his representative capacity for both sides. The obvious inferences of self-dealing, conflict of interest and the lack of any arm's length negotiations leap off the page.

Claim for Tortious Interference/Inducement of Breach

Respondents argue that TCFTV's parent company FEG, under pressure of its own parent News Corp./21CF, licensed Bones to Fox affiliate Hulu for highly speculative, below-market monetary terms. Specifically, they claim that the setting of the licensing terms, the [REDACTED] ad revenue split, and the allocation of the current-season revenues to the Network establish tortious interference and inducement of breach by 21CF, FEG, and FBC.

On April 23, 2010, Mr. Newman stated in an email that he opposed splitting 50% of the revenue from the Hulu Plus model with FBC. (Respondents Ex. 669.) He stated that "after the initial rolling period, the availability of the episodes on Hulu+ impacts EST, DVD and syndication all of which are studio business. Therefore, the studio ought to get the revenue." (Id.)

Mr. Kurgan was asked if there was some larger corporate mandate about digital rights, and he responded that “[t]here were a couple of them. Obviously we had our agreements with Hulu and what we were going to provide Hulu as a company in terms of what rights they were going to be able to exploit.” (7/18/18 Tr. at 1925:22-1926:2.) He further testified that “there was an understanding on a corporate-wide basis that the studio was going to grant us these rights, the network was going to exploit them” (7/18/18 Tr. at 1951: 19-25.) Mr. Chernin confirmed this when he testified with respect to his Hulu dealing that he “was focused on the conglomerate at large, which included the individual divisions.” (7/16/18 Tr. at 1463:8-18.)

It is undisputed that the Fox conglomerate had an equity stake in Hulu, and the evidence established that “Fox writ large” essentially handed over the digital rights at a low cost to build up value of that enterprise. Even when Mr. Kurtzman was asked whether the digital rights were owned by his company, he said, “Well, our company, we’re a division of a bigger company, so I would say our company is, is, you know, the big organization, 21CF.” (7/12/18 Tr. at 873:2-7.) Ms. Brennan was asked if she knew whether the [REDACTED] of the ad share revenue goes to some Fox entity, and she responded that she wasn’t sure if that mattered because from her point of view, it doesn’t matter – “It’s Fox somewhere.” (7/24/18 Tr. at 2829:18-24.)

While the testimony of Fox’s witnesses establish that Fox was concerned with Fox at large, of which the Studio was a part, the fundamental problem is as stated by Ms. Zigler:

I think Peter honestly may have made a very good decision, maybe even a brilliant decision for his parent company. I think he used the studio’s content to build a brand new business and to raise the value of that business, but building it on the backs of the studio he did nothing to protect the Studio or the profit participants in terms of the revenue they should have received for that exploitation.

(7/25/18 Tr. at 2900:11-20.)

The Arbitrator finds that Respondents have established their claims for tortious interference and inducement to breach. The Parent and Network knew that the Studio had Agreements with Participants. They knew that essentially handing over the digital rights to their affiliate Hulu for an unprecedented ad revenue share would interfere with the Studio’s obligations to its Participants. The ad revenue share to the Studio was less than \$1 million, yet the Network made more than \$70 million in revenues for the current season.

VII.

DAMAGES

Breach of Participants Agreements – Domestic Licensing

“Under general contract principles, when one party breaches a contract the other party ordinarily is entitled to damages sufficient to make that party ‘whole,’ that is, enough to place the non-breaching party in the same position as if the breach had not occurred.” Postal Instant Press, Inc. v. Sealy, 43 Cal. App. 4th 1704, 1708-09 (1996) (citations omitted).

Before calculating damages, the Arbitrator addresses Fox’s argument that Participants are not entitled to more than they would have received but-for the breach. Under this but-for scenario, it claims that FBC would not have continued to renew *Bones* because it would have lost tens of millions of dollars. Specifically, Fox asserts that in the but-for world of a full-cost license for Seasons 5-6 and in-season streaming going to TCFTV, FBC would have immediately cancelled *Bones*.

However, there is no evidence that FBC has ever cancelled a top 20 hit like *Bones*; rather, the evidence shows that *Bones* was driving \$[REDACTED] million in profits to the Studio, outweighing the network’s losses (Ex. 700; Fox Closing Slides, 111). It is simply too convenient for Fox to argue that not only did it not breach Paragraph 10(b), but if it did, there was no damage to Participants. This is consistent with Fox’s constant refrain that it was doing *Bones* a favor by keeping it on air. Had Fox performed its contractual obligations, it would have looked to *House* as the comparable program (explained below), negotiated fairly, and paid the license fees accordingly. Moreover, as analyzed and established above, Fox had no intention of cancelling *Bones*, and its claim to the contrary is incredulous and found to be fraudulent.

Both parties agree that *House* is a “comparable” program to *Bones*. Indeed, both parties’ experts agree that *House* is the only “comparable program” that existed at the times *Bones* was licensed for Seasons 5-8. FBC paid [REDACTED] [REDACTED] for Seasons 5-6 of *House*, and had never paid anything less in connection with any one-hour scripted series licensed from any third-party distributor prior to the Seasons 5-6 license. As such, there was no basis under Paragraph 10(b) for TCFTV to have accepted lesser monetary terms from FBC for the same seasons of *Bones*. (7/26/18 Tr. at 3333:11-15, 3333:21-3334:12.)

The Arbitrator agrees with Respondents' position that it is not that FBC should have paid the exact same amounts for Bones as it paid for House, a higher-rated series, in order for TCFTV to have complied with Paragraph 10(b). Instead, TCFTV should have received comparable "monetary terms" – "[REDACTED]"

[REDACTED] (Id. at 3335:12-21, 3336:23-3338:10, 3338:20-3339:17, 3422:5-3423:6.) As was shown at the Hearing, FBC's extended-term license structure already takes into account performance differences across series by [REDACTED]

[REDACTED] (See Ex. 21, ¶¶ 1(bb)-(hh).)

With respect to Season 7, FBC had paid [REDACTED] for Season 7 of House. As such, there was still no precedent for FBC paying anything other than [REDACTED], yet the Season 7 License for Bones had a license fee of [REDACTED], which was [REDACTED] of the expected production costs (see Ex. 816), and completely eliminated performance bonuses of any kind. (Compare Ex. 21, ¶ 1(hh) with Ex. 767.)

As for Season 8 of House, FBC and Universal agreed in May 2011, which was approximately a year before TCFTV licensed Season 8 of Bones to FBC, to a "[REDACTED]" [REDACTED]/episode license fee without bonuses. (Ex. 871.) While Fox argues that this "flat" \$[REDACTED] million per episode fee did not amount to a [REDACTED] license fee, there was evidence to the contrary. Regardless, the \$[REDACTED] million license fee that FBC paid for Bones is not comparable to the \$5 million paid for House, and while FBC could reasonably pay less for Bones than House in Season 8, there is no justification for TCFTV to have received fees at [REDACTED]% of Universal's given the narrowing performance gap between the two series. (7/26/18 Tr. at 3425:18-3427:23; 7/18/18 Tr. at 2014:17-2015:14; Ex. 1228-0019, 0022.)

Respondents' industry expert, Laurie Younger, compared the license agreements for Seasons 5-8 of Bones to the agreements for the same seasons of House. Her analysis ties the [REDACTED] license fee to the production budget for each of Seasons 5-8 of Bones and assumes that all breakage actually paid by FBC would still have been paid under a [REDACTED] license fee, which provides for payment of [REDACTED] approved by the network. (Amended Younger Report Ex. 1270-0030, n. 10; Exs. 118, 107 ¶ 1(cc).)

Fox argues that Participants fail to calibrate for differences between House and Bones. The Arbitrator disagrees. As Ms. Younger explains, the monetary terms of FBC's extended-term license for House seasons 5-7 account for differences in performance by setting license fees at the [REDACTED] and by providing formulas [REDACTED] (See 7/26/18 Tr. at 3320:13-3321:9; 7/18/18 Tr. at 1808:7-18; 7/26/18 Tr. at 3275:21-3280:12; Ex. 448.)

For Season 8, Ms. Younger took the relative performance of House and Bones into account and capped the license fees that should have been paid to TCFTV at \$ [REDACTED] for that season. In total for Seasons 5-8, TCFTV could have complied with its contractual obligations to Respondents while still being paid \$ [REDACTED] million less than Universal received from FBC in connection with the same seasons of House. (See Exs. 1501, 1447-0009-13, 200-0010-15.)

According to Younger's analysis, if TCFTV had licensed Seasons 5-8 of Bones on monetary terms comparable to those Universal received for House, it would have been paid the following⁹:

Monetary Term	Season 5	Season 6	Season 7	Season 8
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⁹ Sources: Ex. 1270, ¶¶ 59-67; Ex. 21, ¶¶ 1(o), (bb)-(hh); Ex. 1447-0009-13; Exs. 1448, 781; Ex. 200-0010-15; Exs. 600, 624, 687, 766, 816, 898, 904.

In total, an additional \$113,831,519 would have been added to Gross Receipts for purposes of calculating Respondents' contingent compensation. (Ex. 1270, ¶ 67.) According to Respondents' participation expert, Michael Sippel, this addition to Gross Receipts would result in a total of \$15,585,047 in payments to Respondents.¹⁰ (Ex. 1268A-0003, Ex. B-1.)

Breach of Participants' Agreements – International Licensing

The United Kingdom

The evidence established that *Bones* was a massive hit for TCFTV in the United Kingdom. In just its second week on Sky, *Bones* was "[REDACTED]," and it more than doubled the total viewership of its *Cold Case* lead-in. (Ex. 152.) By September 2008, *Bones* was "Sky1's #1 series, outperforming the first-four weeks of *Prison Break* by +67%." (Ex. 367.) In 2010, *Bones* was Sky1's number two series. (Ex. 475.) Nonetheless, the license fees TCFTV received were nowhere near comparable to what Sky paid for other programming.

TCFTV licensed *Bones* Season 1 for £[REDACTED] per episode, and it never received more than £[REDACTED] over 12 seasons. By contrast, when Sky licensed *House* from NBC/Universal, an unaffiliated studio, Sky paid £[REDACTED] per episode, more than double that of the highest season. (Ex. 1260B-0015.) When Sky licensed *Lost* from Buena Vista Television, an unaffiliated studio, Sky paid more than £[REDACTED] per episode for *Lost*. (8/8/18 Tr. at 4242:2-19.)

Nonetheless, as Respondents point out, their expert, David Armstrong, took a conservative approach to damages and instead used the series *Journeyman*, a much less successful show that TCFTV licensed to Sky, as a proxy for what Sky should have been paid starting in Season 1 of *Bones*. TCFTV received £[REDACTED] per episode for Season 1 of *Journeyman*, £[REDACTED] more per episode than Season 1 of *Bones*. Mr. Armstrong calculated damages by adding the Season 1 differential, £[REDACTED] per episode, to all 12 seasons of *Bones*.

¹⁰ Regarding FBC and 21CF/FEG's interference in the Agreements with TCFTV and FBC, Respondents seek to be placed "in a position substantially equivalent in a pecuniary way to that which [they] would have occupied had no tort been committed." (Restatement (Second) of Torts § 903, cmt. a (1979).) Therefore, FBC, 21CF, and FEG share TCFTV's liability for the \$15,585,047 in actual damages suffered by Respondents due to its improper self-dealing in licensing *Bones* to FBC.

With the adjustment of Bones license fees to range from \$ [REDACTED] over the 12 seasons, TCFTV should have received an additional \$59,811,000 in revenue. (Ex. 1260B-0016-17.)

Italy and Spain

With respect to Italy, TCFTV entered into several relicense agreements with FIC Italy for Bones which started at \$ [REDACTED] per episode. (Ex. 1260B-0038.) Because FIC Italy was not licensing first-run episodes from TCFTV, Mr. Armstrong evaluated relicense agreements for several series in order find apples-to-apples comparisons. (Ex. 1260B-0011.) He determined that the NCIS licenses were the most similar transactions to the Bones licenses because FIC Italy had three relicenses for each series over the first few seasons. (Ex. 1260B-0012.) Furthermore, NCIS was one of the few series that TCFTV considered a rival to Bones in the international marketplace based on the success of each series. The license fees that FIC Italy paid CBS for NCIS averaged more than double the Bones license fees. (*Id.*) Mr. Armstrong determined that there should have been \$4,662,508 in additional MAGR revenue over the first six seasons, which are the only seasons for which Armstrong had licensing information sufficient to calculate damages.

With respect to Spain, Mr. Armstrong determined that House was the most comparable program for the first eight seasons because the shows aired around the same time period, the number of runs in the license agreements were similar, the term of the agreements were similar, and Mr. Gregg had previously identified House as an appropriate comparable program. (Ex. 1260B-006-009.) The Bones license fees ranged from \$ [REDACTED] per episode to \$ [REDACTED] per episode during the first eight seasons. The House license fees, on the other hand, ranged from \$ [REDACTED] to \$ [REDACTED], making it higher in every season and more than double the Bones license fees in several seasons. (Ex. 1260B-0036.) Mr. Armstrong determined that TCFTV should have obtained approximately the same license fees for Bones from FIC Spain that FIC Spain paid to NBC/Universal for House, resulting in \$1,112,099 added to MAGR.

For Seasons 9-11 in Spain, FIC Spain obtained the far more valuable first window for Bones, unlike in Seasons 1-8 in which La Sexta had the first window. Therefore, Mr. Armstrong determined that the most appropriate comparable license agreements were FIC Spain's license agreements with CBS for Blue Bloods and Hawaii Five-O, for which FIC Spain obtained the first licensing window. (Ex. 1260B-008.)

FIC Spain paid \$ [REDACTED] for Season 9 of Bones with [REDACTED] % escalators for seasons after that. (Ex. 1260B-0008.) During this same time period, FIC Spain paid license fees between \$ [REDACTED] and \$ [REDACTED] per episode for Blue Bloods and Hawaii Five-O, more than three times the Bones license fees. (Ex. 1260B-0034.) As a result, Mr. Armstrong determined that TCFTV should have received at least \$1,852,404 more from Bones during Seasons 9-11, for a total addition to MAGR of \$2,964,503.

Thus, TCFTV should have obtained \$67,311,000 in additional license fees from its affiliates in international distribution which should have been included in TCFTV's Gross Receipts for purposes of properly accounting to Respondents for the MAGR. This addition to Gross Receipts would result in a total of \$7,078,327 in payments to Respondents. (Ex. 2 (1/9/19 Revised Sippel Report Exhibits), Exs. B, B-3.)

Hulu Claims

As set forth above, all revenues from all current-season streaming of Bones were credited to FBC as though FBC possessed those rights. However, the Arbitrator has found that FBC claims to ownership to be unfounded. As such, had TCFTV properly asserted its right as the content owner of those streaming rights, TCFTV would have credited to Participants all Hulu revenues received from the exploitation of current season streaming of the Series. As of August 8, 2018, this totaled \$70,690,961. (Ex. 3840.)

The Arbitrator agrees that disgorgement is not a proper remedy. However, Respondents are entitled to the *expectation damages* that will "put [them] in as good a position as [they] would have been in had the contract been performed." Restatement (Second) of Contracts § 347, cmt. a (1981). Here, the \$70,690,961 represents the amount of damages that will put Participants in as good a position as they would have been in had TCFTV protected its rights.

With respect to Respondents' claim against FBC, FEG and 21CF for tortious interference, Respondents seek compensatory damages in the same amount. If FBC, FEG and 21CF had not interfered with Respondents' contracts with TCFTV and had not induced TCFTV's breach of those contracts, TCFTV would have received at least the \$ [REDACTED] wrongfully diverted to FBC for the current-season exploitation of Bones on Hulu, and

Participants, in turn, would have received their shares of those profits after appropriate reductions.

Respondents also seek damages for Fox's self-dealing in connection with the licensing of Bones to Hulu. Vivica Zigler, Respondents' Hulu expert witness, calculated that had TCFTV honored its contractual duty to the Bones participants, it would have contracted with Hulu to receive an estimated license fee of \$685,000 per episode in connection with the full current-season stacking rights to Seasons 6-12 (140 episodes) of Bones.

Ms. Zigler examined license agreements for six CBS series and determined the most comparable benchmarks among them are Elementary, Blue Bloods and CSI. (Ex. 1273-0021.) She took the average of the comparable CBS deals for an approximate episodic license fee of \$ [REDACTED] (Ex. 1275-0007.) The licenses for Elementary, Blue Bloods and CSI, however, relate to past-season episodes. (Ex. 1275-0005.) The record does not contain any information regarding what Hulu paid third parties for full current-season stacking rights because no third party was willing to license these "crown jewel" rights to Hulu. As such, Ms. Zigler applied a premium as was done with TCFTV's initial license agreement with Netflix for Bones and other series. Specifically with respect to the Netflix deal, a [REDACTED] % premium was applied to the license fee for any current-season episode delivered "[REDACTED] [REDACTED]" which is the same recency with which episodes of Bones were made available to Hulu. (Ex. 652-0008; 7/25/18 Tr. at 2908:20-2909:24; Ex. 1164-0021.) Ms. Zigler therefore applied this [REDACTED] % premium to the average episodic license fee to account for the additional value of current-season episodes of Bones, arriving at an estimated current-season per-episode fee of \$685,000. (Ex. 1275-0007.)

For the past-season episodes of Bones, Ms. Zigler applied an [REDACTED] % ad revenue split to these past-season episodes based on the fact that, prior to execution of the initial Hulu Classic license, third party [REDACTED] refused to license its programming to Hulu for anything less than that share on top of [REDACTED], the value of which Ms. Zigler decided not to include in her calculations. (Ex. 1275-0002 -0004; Ex. 225; 7/25/18 Tr. at 2912:19-2913:22.) Based on Fox's representation that the only past-season episodes ever exhibited on Hulu were the 22 episodes of Season 1, Ms. Zigler calculated damages of \$203,452 for exhibition of past-season episodes on Hulu. (Ex. 1275-0003; Ex. 1231.)

In accord with the above, TCFTV should have included in the Gross Receipts a total of \$96,103,452 for purposes of calculating Respondents' MAGR. As a result, Mr. Sippel calculated total damages of \$10,106,099. (Ex. 1268A-0006.)

Hence, based on the determination that 21CF and FEG interfered with Respondents' agreements with TCFTV in connection with the licensing of both current- and past-season episodes of *Bones* to Hulu for an unreasonable and speculative ad revenue share, 21CF and FEG share TCFTV's liability for those damages. (See Restatement (Second) of Torts § 903, cmt. a.)

Prejudgment Interest

Pursuant to California Civil Code §§ 3287 and 3289(b), Respondents seek prejudgment interest on the full amount of their compensatory damages at the rate of 10% per annum.

The Arbitrator agrees with Fox that prejudgment interest is not appropriate under Section 3287(a), which provides in pertinent part: "A person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in the person upon a particular day, is entitled also to recover interest thereon from that day, except when the debtor is prevented by law, or by the act of the creditor from paying the debt." Under California law, prejudgment interest is not appropriate where damages are not "'certain' or 'capable of being made certain by calculation.'" Whisper Corp. v. California Commerce Bank, 49 Cal. App. 4th 948, 958 (1996). "Damages are deemed certain or capable of being made certain within the provisions of subdivision (a) of section 3287 where there is essentially no dispute between the parties concerning the basis of computation of damages if any are recoverable but where their dispute centers on the issue of liability giving rise to damage." Esgro Central, Inc. v. General Ins. Co., 20 Cal.App.3d 1054, 1060 (1971).

Here, the amount of damages is subject to a judicial determination and not capable of being a sum certain earlier in time. As set forth above, the amount of damages is subject to multiple methods of calculation that require a judicial determination. Experts have presented methodologies concerning the calculation of damages, requiring the Arbitrator to discern how damages should be calculated. Therefore, the Arbitrator declines to award pre-judgment interest under Section 3287(a). See St. Paul Mercury Ins. Co. v. Mountain West Farm Bureau Mutual Ins. Co., 210 Cal. App. 4th 645, 665-66 (2012) (Where "[t]he trial court [is] asked to choose the

method of allocation, i.e., the basis for computation, and to calculate” damages, prejudgment interest should not be awarded.)

However, the Arbitrator does award prejudgment interest under Section 3287(b), which provides: “Every person who is entitled under any judgment to receive damages based upon a cause of action in contract where the claim was unliquidated, may also recover interest thereon from a date prior to the entry of judgment as the court may, in its discretion, fix, but in no event earlier than the date the action was filed.” The Arbitrator, in his discretion, awards prejudgment interest on the damages based upon the contract claims from the date this action was filed, January 11, 2016.

Applying the California legal rate of 10% interest (see Cal. Civ. Code § 3289(b)) to the total award amount of \$32,769,474, the average daily rate of interest is \$8,978.00. The number of days from January 11, 2016 to the date of this Award is 1,120 days. Thus, the total amount of prejudgment interest is \$10,055,360.

Punitive Damages

In addition to actual damages, Respondents seek punitive damages for certain claims. As set forth above, contrary to Fox’s arguments, Paragraph 10(b) does not bar an award of punitive damages for the intentional torts. Further, it is undisputed that the Arbitrator has the authority to award punitive damages. See Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52, 58 (1995) (finding that if contracting parties agree to include punitive damages claims within the issues to be arbitrated, the FAA ensures the agreement will be enforced according to its terms). As such, the Arbitrator examines Respondents’ request for punitive damages.

Tortious Interference

Respondents seek punitive damages as a result of both the non-studio Claimants’ acts of interference and TCFTV’s and FBC’s acts of fraud. Punitive damages are available for tortious interference with contract and inducement of breach. See Duff v. Engelberg, 237 Cal. App. 2d 505, 508 (1965) (inducement to breach contract supports damages for “unforeseen expenses, as well as for mental suffering, damage to reputation, and punitive damages, by analogy to the cases of intentional injury to person or property”) (quoting Prosser, Torts (3d ed.) ch. 26, sec. 123, pp. 972-73); see also Asahi Kasei Pharma Corp. v. Actelion Ltd., 222 Cal. App. 4th 945, 962-64

(2014) (holding that parent company may be liable for tortiously interfering with the contract of its subsidiary and affirming \$30 million in punitive damages against the parent company's individual managers).

Respondents contend that the same evidence establishing FBC's and 21 CF/FEG's tortious interference with, and inducement of breach of, Respondents' Agreements with TCFTV supports an award of punitive damages. (See, e.g., Webber v. Inland Empire Invs., 74 Cal. App. 4th 884, 911-12 (1999) (holding that same evidence establishing liability for tortious interference was sufficient to award punitive damages)). The Arbitrator concurs.

The Arbitrator finds that the evidence concerning the legal action plan and the Release establishes that FBC, 21CF and FEG undertook intentional acts designed to interfere with Respondents' contractual relationships with TCFTV. Additionally, such acts constitute malice and fraud and as such, warrant the imposition of punitive damages. See Cal. Civ. Code § 3294(c)(1) (defining "malice" to mean conduct which is intended by the defendant to cause injury to the plaintiff).

Fraud

Respondents seek punitive damages for TCFTV's and FBC's fraudulent, oppressive and malicious acts in inducing Josephson's and Reichs's signatures on the Release. They ask for punitive damages in an amount that the Arbitrator deems to be an "equitable and reasonable" deterrent to Fox's egregious behavior. Mahon v. Berg, 267 Cal. App. 2d 588, 590 (1968) ("[S]ome deterrent to fraud is equitable and reasonable. It is not afforded if the wrongdoer risks only the fruits of his fraud. The broad equity powers invoked in an action of rescission because of fraud should afford such a remedy."); Cal. Civ. Code § 1692 ("A claim for damage is not inconsistent with a claim for relief based upon rescission. The aggrieved party shall be awarded complete relief")

As Respondents acknowledge, the damages awarded in connection with TCFTV's breach of the ATP in connection with Seasons 5-6 License are already accounted for in the damages for the related tortious interference claim, and therefore, Respondents do not seek dual recovery against TCFTV and FBC for the fraud claim in the form of a multiple of those damages. Rather, they ask that TCFTV share FBC, 21CF, and FEG's liability for that portion of the punitive

damages award arising from their tortious interference in connection with the FBC licenses, and they correctly assert that the fraud is relevant to determining the overall reprehensibility of Fox's conduct.

Tortious interference related to Hulu licensing

Respondents seek punitive damages for 21CF's and FEG's tortious conduct related to the licensing of Bones episodes to Hulu. They point to the testimony of Peter Chernin, 21CF's President at the time of the Hulu launch, that he did not consider it 21CF's "job to protect [its] old business." (7/16/18 Tr. at 1425:24-1428:16.)

The Arbitrator determines that the same evidence establishing 21CF's and FEG's tortious interference with contractual relations and inducing breach of contract in connection with the Hulu/FEG agreements supports an award of punitive damages. As Mr. Chernin bluntly stated, 21CG and FEG sacrificed TCFTV's business for the sake of Hulu's success, and did so knowingly, thereby damaging Respondents by keeping \$96,104,452 from MAGR. This constitutes a reckless disregard for Respondents' rights and as such warrants the imposition of punitive damages.

Amount of Punitive Damages Award

"An award of punitive damages hinges on three factors: the reprehensibility of the defendant's conduct; the reasonableness of the relationship between the award and the plaintiff's harm; and, in view of the defendant's financial condition, the amount necessary to punish him or her and discourage future wrongful conduct." Kelly v. Haag, 145 Cal. App. 4th 910, 914 (2006). Beyond consideration of the above factors, there is no legally prescribed formula to determine the amount of punitive damages, nor is there a bright-line ratio that a punitive damages award may not exceed. State Farm Mutual Auto Ins. Co. v. Campbell, 538 U.S. 408, 424-25 (2003). The finder of fact has "wide discretion to determine what punitive damage award is proper [T]here is a wide range of reasonableness for punitive damages reflective of the fact finder's human response to the evidence presented." McGee v. Tucoemas Fed. Credit Union, 153 Cal. App. 4th 1351, 1362 (2007).

Reprehensibility of Fox's Conduct

To determine the reprehensibility of the defendant's conduct, courts are to consider whether: "the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident." State Farm, 538 U.S. at 419.

The parties agree that the first two factors are not present here. With respect to the third factor – Respondents' financial vulnerability, Respondents contend that while they may not be financially vulnerable in the traditional sense, they depended upon Fox for their careers and livelihoods. As detailed herein, Fox held the position of relative financial power and used it in the course of negotiations by threatening to cancel the Show and put them out of work. Respondents' vulnerability in this regard cannot be ignored. See, e.g., Romo v. Ford Motor Co., 113 Cal. App. 4th 738, 755 (2003) (plaintiffs "were financially vulnerable relative to defendant's financial resources"); Shahinian v. Cedars-Sinai Med. Ctr., 194 Cal. App. 4th 987, 1005 (2011) ("plaintiff was financially vulnerable because he held surgical privileges only at Cedars-Sinai and summary suspension of privileges without opportunity for hearing would foreseeably inflict severe damages to his medical career") (internal quotation marks omitted). Furthermore, the Arbitrator agrees with Respondents that their decision to pursue this lawsuit risked their livelihoods, and it is unlikely that they will ever be hired by either Fox or Disney again.

The fourth factor – whether the conduct involved repeated actions or was an isolated incident – support a finding of reprehensibility. As detailed herein, Fox engaged in tortious conduct related to license fee negotiations for four seasons with the goal of maximizing profits and minimizing participant leakage. See Bardis v. Oates, 119 Cal. App. 4th 1, 22 (2004) ("The jury could find that the kickbacks, markups and concealed commissions" proven at trial "were part of a systematic pattern by Oates of bilking his partners out of funds legitimately belonging to the partnership."). The false promises began in 2005 and continued through 2008 and 2012 when Boreanaz and Deschanel negotiated new agreements, and all in accordance with the legal action plan. In 2009, Fox fraudulently induced Reichs and Josephson to execute the Release. At the same time, Fox entered into agreements with Mr. Ligouri (his First Look Agreement) and

Mr. Hanson (May 18, 2009 overall agreement) and attempted to keep these agreements secretive. In addition and as set forth herein, the non-studio Claimants intentionally interfered with Respondents' contracts in connection with the licensing of Bones to Hulu in self-dealing transactions over the last decade.

Also relevant to this factor is the cavalier attitude of Fox's witnesses. None of the witnesses took responsibility or expressed any remorse for their actions. See Bardis, 119 Cal. App. 4th at 22 (citing the fact that defendant was "unrepentant at trial, insisting that 'in [his] heart' [he] believed he did nothing wrong" as relevant to the analysis of reprehensibility). Indeed, as described herein, many of the witnesses, including Ms. Walden, Mr. Newman, Mr. Bramhall, Mr. Ligouri, Mr. Pearson and Mr. Rice, appear to have given false testimony in an attempt to conceal their wrongful acts.¹¹ The Fox witnesses' testimony at the hearing highlighted their pattern of deceit against Respondents.

Furthermore, Fox's cavalier attitude toward its wrongdoing is further reflected in its Punitive Damages Brief and Reply Punitive Damages Brief, which are devoid of any accountability, responsibility or remorse – and this is even after the detailed findings and analysis of evidence and testimony set forth in the Interim Award. Instead, Fox advances arguments that defy comprehension. It contends that since Respondents are receiving a large amount of compensatory damages "for purely economic harm," punitive damages are essentially not warranted. However, the amount of compensatory damages is large because it is the amount of money that Fox wrongfully withheld from Respondents for over 12 years, in violation of the parties' agreements. Similarly, Fox also points to the fact that Respondents, who are "sophisticated and wealthy participants with substantial financial means," received tens of millions of dollars over Bones's 12 seasons. Again, however, this ignores the amount of money that they should have earned absent Fox's unlawful conduct. To suggest that Respondents should somehow be grateful for what they did receive instead of focusing on what they were deceived and cheated out of is audacious and quite frankly astonishing. Fox also states that there is "no evidence of a long-term pattern of reprehensible or unethical behavior" and that "the tortious conduct was limited to the breaking of two promises." Does Fox really suggest that

¹¹ Merely describing the testimony as false is far too generous. The Arbitrator is convinced that perjury was committed by the Fox witnesses. Accordingly, if perjury is not reprehensible then reprehensibility has taken on a new meaning.

short-term reprehensible or unethical behavior and the breaking of just two promises is alright? By advancing these arguments, Fox seeks to divorce the detailed analysis and findings set forth herein of a pattern and practice of deceit and half-truths for its own financial gain from any punitive damage analysis, essentially asking the Arbitrator to ignore the reprehensibility of its conduct.¹²

Finally, with respect to the fifth reprehensibility factor, the Arbitrator found above in awarding punitive damages that Respondents' harm was the result of Fox's intentional acts of fraud and malice in connection with its fraudulent inducement of the Release and tortious interference with Respondents' agreements in the licensing of Bones to FBC and Hulu. See Bardis, 119 Cal. App. 4th at 22 (finding that "[t]he record []overwhelmingly supports a finding that the harm was caused as the result of intentional fraud, malice and deceit").

Thus, the Arbitrator finds that the third reprehensibility factor leans in favor of reprehensible conduct, and the fourth and fifth factors in the reprehensibility analysis are clearly met. Fox engaged in reprehensible conduct deserving of a punitive damages award at the higher end of the spectrum. Bardis, 119 Cal. App. 4th at 22, 26.

The reasonableness of the relationship between the award and Respondents' harm

The next factor examined is the relationship between the award and the harm to Respondents. Fox asserts that where compensatory damages are substantial, punitive damages can and should be lower than the compensatory damages award. To begin with, a contractual arbitration is "a private proceeding, arranged by contract, without legal compulsion Consequently, the arbitration and award themselves [are] not governed or constrained by due process, including its elements applicable to judicial proceedings to impose punitive damages." Rifkind & Sterling, Inc. v. Rifkind, 28 Cal. App. 4th 1282, 1291 (1994). California courts have

¹² Respondents ask the Arbitrator to consider Fox's pattern of tortious behavior that has harmed individuals other than Respondents. See Lopez v. Watchtower Bible & Tract Soc'y of New York, Inc., 246 Cal. App. 4th 566, 592 (2016) ("Although punitive damages may not be used to punish a defendant for injury inflicted on third parties, a jury may consider evidence of harm to others in determining the reprehensibility of a defendant's conduct toward the plaintiff."); Johnson v. Ford Motor Co., 35 Cal. 4th 1191, 1204 (2005) ("[D]ue process does not prohibit state courts, in awarding or reviewing punitive damages, from considering the defendant's illegal or wrongful conduct toward others that was similar to the tortious conduct that injured the plaintiff or plaintiffs." However, while there was some general testimony about similar contract provisions with participants on other shows and other legal actions against Fox, the evidence was not specific or sufficient enough to allow the Arbitrator to make any findings regarding other similar tortious behavior as set forth in the guiding cases.

disclaimed any ability to review an arbitrator's fixing of punitive damage awards. See Mave Enters., Inc. v. Travelers Indem. Co., 219 Cal. App. 4th 1408, 1440 (2013) (“[T]he 15-to-one ratio of punitive damages to compensatory damages does not constitute the type of legal error – assuming it was error – that warrants vacatur under the CAA.”); Shahinian, 194 Cal. App. 4th at 1006-07 (any claimed excessiveness of arbitrator's punitive damages award “would be no different from other errors of law, which are generally not reviewable”). As such, Fox's assertion of federal due process standards as a limitation on punitive damages does not apply here to the Arbitrator's discretion in a private arbitration, which was sought by Fox itself.

Moreover, while Fox attempts to assert a bright-line rule requiring a 1:1 ratio between punitive damages and compensatory damages, no such authority prohibits an award exceeding a 1:1 ratio. “While punitive damages must bear a reasonable relation to actual damages, no fixed ratio exists to determine the proper proportion Rather, calculating punitive damages involves a fluid process of adding or subtracting depending on the circumstances.” McGee, 153 Cal. App. 4th at 1361. “[T]here is a wide range of reasonableness for punitive damages reflective of the fact finder's human response to the evidence presented.” Id. at 1362. Although there is no specific formula, courts have found that “[i]n cases where there are significant economic damages and punitive damages are warranted but behavior is not particularly egregious, a ratio of up to 4 to 1 serves as a good proxy for the limits of constitutionality.” Planned Parenthood of Columbia/Willamette Inc. v. Am. Coal of Life Activists, 422 F.3d 949, 962 (9th Cir. 2005). On the other hand, “[i]n cases with significant economic damages and more egregious behavior, a single-digit ratio greater than 4 to 1 might be constitutional.” Id.

In the Roby case relied on by Fox, the court found that a lower ratio of punitive damages to compensatory damages was warranted because plaintiff's recovery of emotional distress damages itself contained a “punitive element.” See Roby v. McKesson Corp., 47 Cal. 4th 686, 718 (2009) (court noted that out of a \$1,905,000 compensatory damages award, only \$605,000 was for economic losses, resulting in the remaining \$1.3 million awarded for plaintiff's physical and emotional distress and representing a punitive component). In other words, a high amount of non-economic damages may reflect a punitive aspect of the award. Importantly, “[i]n State Farm, the high court suggested that a ratio of one to one might be the federal constitutional maximum in a case involving, as [in Roby], relatively low reprehensibility and a substantial

award of *noneconomic* damages.” *Id.* (Emphasis added.) This is not the case here, with a relatively high reprehensibility and no award of noneconomic damages.

Respondents argue that a punitive damages award of at least four times the amount of Respondents’ actual damages and up to nine times the amount of Respondents’ actual damages is warranted. The Arbitrator finds that a punitive damages award of five times the amount of Respondents’ actual damages is appropriate.

In Bardis v. Oates, 119 Cal. App. 4th 1 (2004), a partner in a real estate partnership and his corporation, which had engaged in a pattern of self-dealing designed to line the defendants’ pockets at the expense of the partnership, were found liable for intentional interference with economic advantage, intentional misrepresentation, fraudulent concealment, breach of fiduciary duty, and breach of the partnership agreement. *Id.* at 9. While the harm suffered by the plaintiffs was solely economic, the court found that the defendants’ repeated and intentional self-dealing constituted “egregious misconduct” and held that a “high-end punitive damages award” of nine times compensatory damages was justified due to the presence of the fourth and fifth reprehensibility factors alone. *Id.* at 22-23. Similarly, here, Fox engaged in a pattern and practice of fraudulent self-dealing by which it enriched itself in violation of TCFTV’s participation agreements with Respondents.

FBC, 21CF, and FEG’s tortious interference in connection with the FBC licenses caused \$15,585,047 in actual harm to Respondents, while 21CF, FEG and FBC’s tortious interference in connection with the Hulu licenses caused an additional \$10,106,099 in actual harm to Respondents.¹³ Clearly, given the precedent in Bardis for awarding punitive damages at nine-to-one in economic damages cases involving a company-wide pattern and practice of fraudulent and malicious conduct, punitive damages of five times the amount of Respondents’ actual damages is supported, for a total of \$128,455,730 (\$77,925,235 in punitive damages for tortious interference

¹³ Respondents, relying on Bardis, seek to include prejudgment interest with the compensatory damages to form the basis for the punitive damages ratio. However, the Arbitrator is not persuaded that the Bardis court included prejudgment interest. See Bardis, 119 Cal. App. 4th at 17 & n. 7 (noting that the amount the jury awarded was the difference between the total damages figure, including interest, and “Expenses without Documentation” including accrued interest). Furthermore, the award of prejudgment interest under Section 3287(b) and its calculation were not determined until the Interim Award issued.

with contract and \$50,530,495 in punitive damages for tortious interference with Hulu agreement).

The amount necessary to punish and deter future wrongful conduct

Finally, with respect to the last of the three factors for determining a punitive damages award, while “all three factors must be satisfied, the most important question is whether the amount of punitive damages award will have deterrent effect – without being excessive.” McGee, 153 Cal. App. 4th at 1362; Coll. Hosp. Inc. v. Superior Court, 8 Cal. 4th 704, 712 (1994), as modified (Nov. 23, 1994) (“Punitive damages are to be assessed in an amount which, depending upon the defendant’s financial worth and other factors, will deter him and others from committing similar misdeeds.”). “The ultimately proper level of punitive damages is an amount not so low that defendant can absorb it with little or no discomfort . . . nor so high that it destroys, annihilates, or cripples the defendant.” Soto v. BorgWarner Morse TEC Inc., 239 Cal. App. 4th 165, 192 (2015), as modified (Aug. 20, 2015).

Fox has stipulated that parent company 21CF’s net worth is \$21.924 billion, and that such evidence is sufficient for the Arbitrator to determine the appropriate amount of punitive damages as to Claimants. (See Jan. 14, 2019 Joint Stipulation Regarding Financial Condition.)¹⁴ As Fox states, punitive damages must be based on the factors set forth and not solely on the defendant’s wealth. State Farm, 538 U.S. at 427 (holding the wealth of a defendant “cannot make up for the failure of other factors, such as ‘reprehensibility,’ to constrain significantly an award that purports to punish a defendant’s conduct” (quoting Gore, 517 U.S. at 585)). Here, there is no danger of the award being based solely on the defendant’s wealth as the Arbitrator has found a higher level of reprehensibility as well as a reasonable relationship between the award and the harm.

Aside from the lack of any bright-line rule, Fox’s assertion that a one to one ratio should be awarded completely ignores any deterrence factor. Indeed, even Fox’s suggestion of such a ratio following the Interim Award reflects its lack of contrition. Moreover, an award of five times the amount of compensatory damages represents 0.6 percent of 21CF’s stipulated net

¹⁴ As set forth in the Interim Award, the Arbitrator must consider Claimants’ financial condition, on which the plaintiff bears the burden of proof. Adams v. Murakami, 54 Cal. 3d 105, 119 (1991).

worth, which is well below the 10 percent cap recognized under California law. See, e.g., Sierra Club Found. v. Graham, 72 Cal. App. 4th 1135, 1163 (1999) (“Finally the award was more than 2 percent of Graham’s net worth, far less than the 10 percent cap generally recognized by our courts.”); Weeks v. Baker & McKenzie, 63 Cal. App. 4th 1128, 1166-67 (1998), as modified on denial of reh’g (June 2, 1998) (“It has been recognized that punitive damages awards generally are not permitted to exceed 10 percent of the defendant’s net worth.”). In fact, one could question whether a five to one ratio given Fox’s financial condition and lack of contrition serves to deter the wrongful conduct at issue here, or whether it will be considered part of the cost of doing business.

Courts have approved punitive damages awards equaling far greater percentages of defendants’ net worth. See Bigler-Engler v. Breg, Inc., 7 Cal. App. 5th 276, 309 (2017) (award of 5% of defendant’s net worth); Weeks, 63 Cal. App. 4th at 1166-67 (award of 5% of defendant’s net worth). Similarly, courts have approved ratios higher than the five to one ratio here. See Las Palmas Assocs. V. Las Palmas Ctr. Assocs., 235 Cal. App. 3d 1220, 1255 (1991) (court preserved a 7.9 to 1 ratio of punitive damages to compensatory damages); Simon v. San Paolo U.S. Holding Co., 35 Cal. 4th 1159, 1182-83 (2005) (court reduced a punitive damages award from 340:1 to 10:1); Planned Parenthood of the Columbia/Williamette Inc. v. American Coalition of Life Activists, 422 F. 3d 949, 963 (9th Cir. 2005) (court held that a 9:1 ratio did not offend its “constitutional sensibilities”). Fox relies on Mattel, Inc. v. MGA Entertainment, Inc., 801 F. Supp. 2d 950 (C.D. Cal. 2011) wherein the court awarded exemplary damages in “an amount equal to the remitted compensatory damage award.” However, the compensatory damage award was \$85 million, and the punitive damages award was “approximately 3.6% of Mattel’s net worth.” Mattel, 801 F. Supp. 2d at 956. The Mattel court also found that the need for deterrence was low “since other members of the close-knit toy industry have been alerted to Mattel’s misconduct as a result of this litigation” Id. at 955. By contrast, the need for deterrence is greater here given the private nature of arbitration and the fact that other profit participants have not been alerted to Fox’s misconduct.

As such, in light of Fox’s financial condition, a punitive damages award in the amount of \$128,455,730 is reasonable and necessary to punish Fox for its reprehensible conduct and deter it from future wrongful conduct.

VIII.

ATTORNEYS FEES AND COSTS &

ARBITRATOR FEES AND ARBITRATION COSTS

The parties submitted a Stipulation Re: Memorandum of Costs wherein the parties stipulated that Respondents are the prevailing parties under the parties' respective Agreements. In accordance with the parties' Stipulation, the Arbitrator finds as follows: (1) Josephson is awarded attorneys' fees in the amount of \$2,771,494.30 and costs in the amount of \$787,114, for a total of \$3,558,608.30; and (2) Reichs, Deschanel and Boreanaz are awarded attorneys' fees in the amount of \$3,087,989.50 and costs in the amount of \$754,953.44, for a total of \$3,842,942.94.

With respect to the Arbitrator's fees and Arbitration costs, the Stipulation states that since Respondents are the prevailing parties, they are entitled to "all costs of arbitration." As such, Respondents are awarded the costs of arbitration in the amount of \$264,707.29. This amount is representative of Respondents' share of Arbitration fees and costs.

IX.

AWARD

Final Comments

At the outset of Fox's closing arguments, counsel for Fox conveyed two observations directed at the Arbitrator. First, that the Arbitrator paid close attention to the examination of the witnesses and the evidence in general and thereon engaged in very rigorous examinations of Fox's witnesses at times. Second, that the Arbitrator seemed to be caught up and swayed by the rhetoric of counsel for Respondents and felt that the Arbitrator may have been inappropriately predisposed by the vitriolic spin, characterizations and strident presentations by counsel for Respondents. To make it very clear, this did not occur; however further discussion is warranted.

Unfortunately, the Arbitrator believes that these two observations must be addressed. As stated during the course of the hearing and repeated again, Respondents' case was presented and made (virtually entirely) through Evidence Code Section 776 witnesses. Or to put it another way,

Respondents' case was presented and supported through the testimony of the Fox witnesses themselves.

It is Fox and Fox alone that is responsible for the evidentiary findings made herein. If this had been a Jury trial, counsel for Fox would be decrying a runaway verdict comprised of passion and prejudice. However, to reiterate this ignores that it was Fox's own employees, executives and witnesses that provided the evidence for the Arbitrator to make the findings set forth above.

Since it is the purview of the Arbitrator to weigh the credibility of the witnesses and in accordance with the testimony detailed above, it can only be concluded that the Fox witnesses lacked credibility and at times appeared to intentionally deviate from the truth even in the face of clear and unequivocal controverting facts. A myriad of explanations by the Fox witnesses cannot account for their complete disregard for obvious and uncontroverted facts. There simply appeared to be a company-wide culture and an accepted climate that enveloped an aversion for the truth.

Yes, the Arbitrator did examine the Fox witnesses proffered. However, this became essential so as to undertake a thorough attempt to find the truth. Arbitrations and Trial Courts are designed and tasked to find the truth. The entire system of justice is designed to be a rigorous search for the truth. The job of any trier of fact be it a judge or an arbitrator is to find the truth by any means necessary.

This was done and done without any pre-disposition, passion or prejudice. The Arbitrator carried out his role in a dispassionate, neutral and surgical manner so as to accomplish what Shakespeare has called: "***truth will out***" (*originally found in Shakespeare's play the "Merchant of Venice"*). Meaning that the truth will eventually be made public.

This Award reflects the evidence, the facts and the truth. Every finding made is supported by the documentary evidence presented and the transcript of the testimony of the witnesses themselves as well as the exhibits. The hearing transcript is extensively cited and quoted with respect to all of the Fox witnesses and leaves no room for any inflection of passion or prejudice.

Conclusion

Accordingly, Respondents have established their claims for breach of contract, fraud, and tortious interference with contract, and they are hereby awarded the following:

- (1) For the breach of contract claim based on domestic licensing: \$15,585,047 in actual damages;
- (2) For the breach of contract claim based on international licensing: \$7,078,327 in actual damages;
- (3) For fraud: Rescission of the Release;
- (4) For breach of contract based on Hulu agreements: \$10,106,099 in actual damages;
- (5) For Tortious Interference with Contract and Tortious Interference with Hulu agreements: \$128,455,730 in punitive damages;
- (6) Prejudgment interest on the breach of contract damages from the date this action was filed: \$10,055,360;
- (7) Attorneys' fees and costs: \$3,558,608.30 total to Josephson; and \$3,842,942.94 total to Reichs, Deschanel and Boreanaz; and
- (8) Arbitrator fees and Arbitration costs representative of Respondents' share only: \$13,664.66

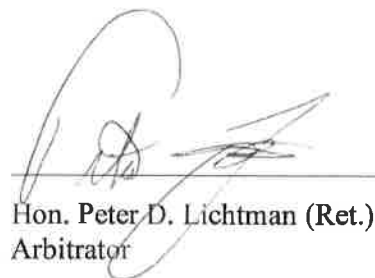
The TOTAL AMOUNT of this Award is: **\$178,695,778.90.**

Accordingly, Respondents are hereby awarded the sum of **\$178,695,778.90** as and for those damages identified above. This award is in favor of Respondents and against the Claimants. Post-judgment interest shall accrue on the full amount of the final award from the date of issuance at the statutory rate.

Amended Final Award

This award resolves all claims between the parties submitted for decision in this proceeding and is the arbitrator's final award.

Dated: February 4, 2019



Hon. Peter D. Lichtman (Ret.)
Arbitrator

PROOF OF SERVICE BY E-Mail

Re: Twentieth Century Fox Film Corporation et al. vs. Wark Entertainment, Inc. fso Barry Josephson et al.
Reference No. 1220052735

I, Jasmine Lu, not a party to the within action, hereby declare that on February 20, 2019, I served the attached AMENDED FINAL AWARD on the parties in the within action by electronic mail at Los Angeles, CALIFORNIA, addressed as follows:

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Twentieth Century Fox Film Corp.

Twenty-First Century Fox, Inc.

I declare under penalty of perjury the foregoing to be true and correct. Executed at Los Angeles,
CALIFORNIA on February 20, 2019.



Jasmine Lu

JAMS

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Exhibit 2

ORIGINAL

**PURCHASE AGREEMENT FOR PURCHASE OF
LITERARY MATERIAL AND LIFE STORY RIGHTS**

"MONDAY MOURNING" / KATHLEEN J. REICHS LIFE STORY RIGHTS

Purchase Agreement dated as of _____, between TEMPERANCE BRENNAN LP, a Delaware partnership ("**Lender**") f/s/o KATHLEEN J. REICHS ("**Owner**"), and TWENTIETH CENTURY FOX TELEVISION, a unit of Twentieth Century Fox Film Corporation, a Delaware corporation ("**Fox**").

1. DEFINITIONS:

- (a) Life Story Rights: The life story of Owner limited to the events and experiences contained in the Literary Property and/or her career as a forensic anthropologist, as well as personal and professional events reasonably related to her career as a forensic anthropologist (the "**Life Story Rights**").
- (b) Literary Material: That certain published book entitled *Monday Mourning* written by Owner (the "**Book**"), as well as reasonably related personal and professional events outside such timeframe, shall be collectively referred to herein as the "**Literary Property**". The Life Story Rights and, if applicable, the Literary Property, shall sometimes be collectively referred to herein as the "**Work**."
- (c) Program: All references herein to "**Program**" shall be deemed to refer to any program produced by Fox based on the Life Story Rights and, if applicable, the Literary Property.
- (d) Option Agreement: This Purchase Agreement is incorporated by reference, to the extent referred to therein, into that certain Option Agreement for Purchase of Literary Material and Life Story Rights, with Exhibits, Schedules and attachments thereto, between Lender, Owner and Fox, dated as of September 1, 2004 ("**Option Agreement**"), with respect to Fox's acquisition of an option to acquire all rights to the Life Story Rights and/or the Literary Property ("**Option**") subject to the provisions contained herein and in the Option Agreement regarding Reserved Rights and reversion.

2. GRANT OF RIGHTS: Subject to Owner's reserved rights and the reversion provisions contained herein and in the Option Agreement, Lender and Owner hereby irrevocably grant to Fox, its successors, assigns and licensees, exclusively and in perpetuity throughout the universe all rights of every kind and nature whether now known or hereafter devised, in and to the Life Story Rights and, if applicable, the Literary Property ("**Granted Rights**"). Without limiting the generality of the foregoing, the Granted Rights include all musical and dramatic, live and animated television series, sequel and remake, publishing and merchandising rights.

3. OWNER'S REPRESENTATIONS, WARRANTIES AND INDEMNIFICATION: Lender and Owner represent, warrant and agree that as of the date of this Purchase Agreement and continuing thereafter:

(a) Sole Proprietor: Lender and Owner are the sole and exclusive proprietors throughout the universe of the Literary Property with sole and absolute right and authority to grant the Granted Rights.

(b) Sole Writer: Owner is the sole writer and creator of the Literary Property.

(c) Marital Status: At all times during the creation of the Literary Property Owner has been continuously married to Paul A. Reichs ("Spouse").

(d) No Prior Exploitation: No development of the Life Story Rights or the Literary Property or any part thereof for the purpose of producing a Motion Picture has been previously undertaken or authorized.

(e) No Prior Grant: None of the Granted Rights have been granted or assigned by Lender and/or Owner or any Party acting under the authority of or on behalf of Lender and/or Owner to any Party other than to Fox.

(f) No Infringement or Violation of Third-Party Rights: The Literary Property is original and has not been adapted from any other literary, dramatic or other material of any kind, nature or description, nor, except for material which is in the public domain (which shall not be a material or substantial part thereof), has the plot, scenes, sequence or story of any other literary, dramatic or other material been copied or used in the Literary Property; insofar as Lender and Owner have knowledge in the exercise of reasonable prudence, (i) the Literary Property does not infringe upon or violate any common law, statutory or other right in any other literary, dramatic or other material; (ii) the material in the Literary Property does not violate the right of privacy or publicity of any person or defame any person and the full use of the Granted Rights will not violate any rights of any Party; and (iii) to the best of Owner's knowledge in the exercise of reasonable diligence the Literary Property is not in the public domain anywhere in the universe.

(g) Owner's Indemnification: Lender and Owner hereby agree to indemnify Fox, Fox's subsidiaries, affiliates and parent and related companies, and its and their successors, licensees and assigns, and the respective officers, directors, agents, attorneys and employees of each of the foregoing, from and against any claims, costs, expenses, losses or damages (including reasonable outside attorney's fees) occasioned by or arising out of a breach of any representation, warranty or agreement made by Lender and/or Owner herein. Fox agrees similarly to indemnify Owner with respect to material added to the Literary Property by Fox or at Fox's request and with respect to the development, production, distribution and exploitation of the television program or other production or derivative work thereof based upon the Literary Property by Fox. The provisions of this paragraph shall survive the termination of this Agreement.

4. PUBLIC DOMAIN MATERIAL/MEMBER OF THE PUBLIC: Nothing contained in this Purchase Agreement shall at any time limit Fox's right to utilize freely, in any work or production, any material which may be in the public domain, whether included in the Life Story

Rights or Literary Property or derived from some other source, or shall be construed to be prejudicial to or operate in derogation of any rights.

5. "PURCHASE PRICE:"

(a) Life Story Rights: As consideration in full for the Granted Rights in and to the Life Story Rights, all rights, licenses, privileges and property herein conveyed by Lender and Owner to Fox, and for the representations, warranties, covenants and agreements made by Owner, Fox shall pay Lender the sum of [REDACTED], payable upon exercise of the Option as provided in the Option Agreement and signature of this Purchase Agreement by Fox or upon commencement of principal photography for the Pilot, whichever first occurs. The Purchase Price is for initial exploitation as a television series (if initially released as a theatrical motion picture or other format, the Purchase Price shall be negotiated in good faith within Purchaser's customary parameters for such transactions).

(b) Literary Property: As consideration in full for the Granted Rights in and to the Literary Property, all rights, licenses, privileges and property herein conveyed by Lender and Owner to Fox, and for the representations, warranties, covenants and agreements made by Owner, Fox shall pay Lender the sum of [REDACTED], payable upon exercise of the Option as provided in the Option Agreement and signature of this Purchase Agreement by Fox or upon commencement of principal photography for the Pilot, whichever first occurs. In addition, for each of the first five annual broadcast seasons of a television Series which is produced and based in whole or in part on the Literary Property (including the first season), Fox shall pay Lender an additional [REDACTED], provided that the total Purchase Price paid to Lender for the Literary Property shall not exceed \$[REDACTED]. The Purchase Price is for initial exploitation as a television series (if initially released as a theatrical motion picture or other format, or if another format is to be released prior to payment of the total Purchase Price, the Purchase Price shall be negotiated in good faith within Purchaser's customary parameters for such transactions). For clarity, the Purchase Price above shall be [REDACTED], provided that if fewer than 5 annual broadcast seasons of a television series are produced, and therefore the total of payments above is less than [REDACTED], Fox shall nonetheless have all distribution rights in perpetuity for the episodes produced hereunder.

6. ROYALTY: If Fox produces a Series hereunder based on the Life Story Rights and/or the Literary Property, then Fox shall pay Lender a royalty of [REDACTED] for each original episode produced (excluding the Pilot) ("Series Royalty"), payable promptly following production of each such episode.

7. PRODUCER SERVICES:

(a) Pilot Producing Fees and Services: If Fox produces a Pilot based on the Life Story Rights and/or the Literary Property, Fox shall engage Lender to furnish the producing services of Owner as a non-exclusive non-writing Producer and Owner shall render services to Fox at a fee of [REDACTED] ("Pilot Producer Fee"). The Option payment set forth in Paragraph 3(a) of the Option Agreement is applicable against the Pilot Producer Fee.

(b) Series: If Fox produces a Series based on the Life Story Rights and/or the Literary Property and Owner completes all Producer services on the Pilot, Fox shall engage Lender f/s/o Owner as a non-exclusive non-writing Producer for all original episodes of the Series produced at a fee of [REDACTED] per original episode produced for the life of the Series

(c) Definition: "Producer services" shall be defined as meaningful services normally and customarily rendered by television producers in the U.S. television industry. Such producing services shall be subject to Owner's reasonable professional availability (provided that Producer services are not passive services and if Owner is unable to render such services Fox is not obligated to pay Owner for services not rendered), rendered in-person when and as required by Fox (and by telephone, fax or other remote means otherwise), and shall include reviewing stories and scripts and submitting meaningful written comments thereon, and Owner must be reasonably available to Fox for consultation generally in connection with the Program. All services hereunder shall be performed consistent with Fox's directions, practices and policies.

(d) Pay-or-Play: All of Owner's services pursuant to this Paragraph 7 are to be rendered on a pay-or-play basis. Fox is not obligated to use Owner's services or to produce or exploit the Programs. Owner may be discharged at any time without cause subject only to Fox's obligation to pay the balance of any compensation which may be due Owner or Lender pursuant to this Agreement or any applicable guild agreement. If Fox exercises its pay-or-play rights, then any compensation earned by Owner in the television industry during the period that Fox could have required Owner's producer services hereunder shall reduce Fox's obligation to pay Lender and Owner compensation hereunder. Owner and Lender shall immediately notify Fox in writing of any such compensation earned by Owner in the television industry.

8. SERIES BONUS: If Fox produces a Series based on the Life Story Rights and/or the Literary Property and Owner completes all material Producer services in connection with the first production year of such Series, in addition to any other sums payable hereunder Fox shall pay Lender a Series Bonus of [REDACTED]. The Series Bonus is based on production of 12 episodes (excluding the Pilot) and shall be reduced proportionately if fewer episodes are produced, except that no Series Bonus shall be payable if fewer than 6 episodes (excluding the Pilot) are produced.

9. SCREEN CREDIT: Provided that Fox exercises the applicable options, and subject to Owner's performance of the terms and conditions of this Agreement, the following shall apply:

(a) Source Material Credit: Owner shall be accorded customary source material credit (e.g., in substantially the form "Based Upon the Book By Kathy Reichs" if the title of the Series is the same as the Literary Property and "Based Upon The Books by Kathy Reichs" if the title is not) on a separate card in the main titles, adjacent to the script writer's card to the extent permitted by applicable guild agreements and in the same size and type as that accorded the writer of the teleplay, provided that any such credit must be in accordance with final WGA determination.

(b) Producer Credit: Owner shall be accorded credit as "Producer" (as "Kathy Reichs") on each Series episode for which Owner actually completes all applicable

services on a separate card in the main or opening titles, as applicable, grouped among and in a type, size, and boldness substantially similar to other non-writing Producer credits (if any).

(c) **Limitations:** Except as otherwise set forth in this Paragraph, all aspects of Owner's credit shall be at Fox's sole discretion. In addition, credit shall be subject to network (or other licensee) and applicable guild approval. Inadvertent or casual failure to accord credit as provided herein shall not be deemed to be a breach of this Agreement. Neither Lender nor Owner shall be entitled to seek injunctive relief for a failure to accord credit. Fox agrees, upon receipt of written notice from Owner specifying any such failure, to promptly take such steps as are reasonably practicable to cure such failure with respect to future copies of the applicable Program.

10. CONTINGENT COMPENSATION:

(a) Subject to Owner's complete performance of all of the material terms and conditions set forth herein, if a Series is produced hereunder based on the Literary Property, Lender shall be entitled to an aggregate sum equal to [REDACTED] of the Modified Adjusted Gross Receipts, if any, derived from the Series ("MAGR"), apportioned [REDACTED] for Life Story Rights and Literary Property Rights (collectively), if applicable, and [REDACTED] for Owner's producing services.

(b) **Vesting:** The percentage of Contingent Compensation participation payable, if at all, to Lender for Owner's producing services (but not the [REDACTED] for Life Story Rights and/or Literary Property Rights, which shall not be subject to vesting) shall vest as follows:

- (i) [REDACTED] upon Owner's completion of all services on the Pilot Script;
- (ii) [REDACTED] upon Owner's completion of all Producer services on the Pilot;
- (iii) [REDACTED] upon Owner's completion of all Producer services with respect to the first production year of the Series; and,
- (iv) [REDACTED] upon Owner's completion of all Producer services with respect to the second production year of the Series.

(c) For the purposes hereof, MAGR shall be defined, computed, accounted for and paid according to the Definition of MAGR customarily used by Fox, and shall be incorporated herein, subject to good faith negotiations within the customary parameters for persons of Owner's stature in the television industry; provided, however, the Fox Distribution Fees applicable to television distribution will be [REDACTED] except with respect to Gross Receipts derived from the initial U.S. Network license or any extensions or renewals thereof, which shall be [REDACTED]. Notwithstanding the foregoing, in the event that Fox enters into an agreement with a Network for the renewal of a Series following the expiration of the initial Network License ("Network Renewal") and such Network Renewal provides for the Network to pay to Fox, prospectively, an episodic license fee in excess of the pattern budget for such Series ("Premium License Fee"), then Fox shall charge the [REDACTED] Distribution Fee on the amount by which the Premium License Fee exceeds the pattern budget. All other Distribution Fees are Fox's standard. The Fox

Administrative Charge shall be 15%. There shall be no Fox Administrative Charge charged on Fox Financing Charge or Fox Financing Charge on Fox Administrative Charge or Fox Financing Charge on Fox Financing Charge.

11. MOTION PICTURE AND ALLIED RIGHTS: Motion Picture and Allied Rights shall include all rights of every kind, nature and description, solely and exclusively throughout the universe, in and to the Literary Property, including the following exclusive rights:

(a) Motion Pictures: Subject to the provisions of the Purchase Agreement regarding Purchase Price, the sole and exclusive right, throughout the universe, to make, produce, adapt, sell, lease, rent, exhibit, perform and generally deal in and with in any manner of exploitation and disposition of Motion Picture versions of every kind, nature and description of the Literary Property, or any part or portion thereof (including Theatrical Motion Pictures, Television Motion Pictures and Home Video Motion Pictures) and to register and obtain copyright and copyright renewal therein throughout the universe, including the right to make, produce, adapt, project, exhibit and/or transmit, visually and/or audibly, Motion Pictures or any other versions of the Literary Property or any part thereof by means of the medium known as home video cassettes and discs or by any process now known or hereafter devised analogous thereto and/or by means of the medium known as television or by any process now known or hereafter devised analogous thereto by any and all means of transmission now known or hereafter devised, including live television (except as otherwise specified herein), free television, pay television, subscription television, cable television, satellite television, public television and educational television and all analogous communication uses and exhibitions pursuant to or on any form or device of electronic communication by which pictures and sound are exhibited or transmitted to the public. Without limiting the generality of the grant of rights to Purchaser in the Literary Property, Purchaser shall have the right to telecast the Literary Property or any part or version thereof (whether direct from living actors or from Motion Pictures or otherwise) in connection with the advertising, publicity or exploitation of any Motion Picture which may be produced hereunder.

(b) Characters, Adaptations, Title, Remakes, Sequels: The sole and exclusive right throughout the universe in its sole discretion, without limitation, to use the characters and characterizations contained in the Literary Property and any Motion Picture versions thereof, in any and all languages, with or without sound accompaniment and with or without the interpolation of musical numbers therein, to translate the Literary Property into any and all languages, to adapt, rearrange and make any changes in, deletions from or additions to the Literary Property, to change the sequence thereof, to use a portion or portions of the Literary Property, to change the title of the Literary Property, to use said title or any components thereof in connection with materials, works or Motion Pictures wholly or partially independent of the Literary Property and/or for any musical or lyrical composition whether or not contained in the sound track of any of said Motion Picture versions, to change the characters in the Literary Property, to change the descriptions of said characters, and to use all or any part of the foregoing in new versions, adaptations, other Motion Pictures, Remakes and Sequels (including Additional Motion Pictures, Author Written Sequel Motion Pictures, Studio Sequel Motion Pictures and Remakes), in any and all languages, and to register and secure copyright and copyright renewal therein throughout the universe. Purchaser agrees that to the extent true-life events from

Owner's life are portrayed in a program produced hereunder, it shall not portray Owner herself as engaging in criminal behavior.

(c) Sound Recordings: The sole and exclusive right, throughout the universe, to mechanically produce, reproduce and license the reproduction of spoken words, taken from or based upon the text or theme of the Literary Property, on records, films, tapes or other devices designed or used for the purpose of producing and reproducing sound separately or in synchronism with, accompaniment of or supplementary to Motion Pictures, using for that purpose all or a part of the text, theme, title of or dialogue contained in the Literary Property.

(d) Music: The sole and exclusive right to include in any version of the Literary Property musical accompaniment, and to further include in any such version interpolations of musical compositions or lyrics to be performed or sung by the performers in any such version.

(e) Versions: The sole and exclusive right to make musical comedy, operetta, operatic or dramatico-musical Motion Picture versions of every kind and nature based upon the Literary Property.

(f) Radio: The right to broadcast the Literary Property, or any part or version thereof, by means of radio processes to the extent the Literary Property is incorporated into a Motion Picture which may be produced hereunder.

(g) Publications: The right to prepare, publish and copyright, or cause to be prepared, published and copyrighted, in any and all languages, in any and all Territories in the universe, in any form or media (including, but not limited to, hard and soft cover books, press books, press notices, trade journals, periodicals, newspapers, heralds, fan magazines, souvenir programs, picture books, comic books, illustration books and/or activity books or booklets), synopses, revised and/or abridged versions of the Literary Property, adapted from the Literary Property or from any Motion Picture or other version thereof; provided that no such synopsis, revised or abridged version shall include more than 7,500 words in the aggregate taken directly from the Literary Property. Purchaser shall have the right to publish and copyright, or cause to be published and copyrighted, screenplays, teleplays and scripts adapted from or based upon the Literary Property; the right to publish novelizations of screenplays, teleplays and scripts adapted from or based upon the Literary Property shall be "frozen" subject to good faith negotiation between Owner and Purchaser if and when Purchaser wishes to exercise such rights.

(h) Commercial Tie-In/Merchandising: The right to exclusively use and exploit and to license others to utilize and exploit throughout the universe all Commercial Tie-In Rights and Merchandising Rights of any sort and nature arising out of or connected with any or all of the following: (i) the Literary Property; (ii) any Motion Picture versions of the Literary Property; (iii) the title or any titles of the Literary Property or any Motion Picture versions thereof; (iv) the characters and characterization contained in the Literary Property or any Motion Picture versions thereof; (v) the names, likenesses or characteristics of said characters; and (vi) physical properties or other materials appearing or used in or in connection with all or any part of the Literary Property or any Motion Picture versions thereof. Notwithstanding the foregoing, Purchaser shall not have

the right to merchandise Owner's actual likeness nor shall Purchaser depict Owner herself (as opposed to a fictional character created by Purchaser) as directly endorsing a product or service.

12. **RESERVED RIGHTS:** Without limiting the Granted Rights, Owner does hereby reserve throughout the universe only the following rights ("**Reserved Rights**"), subject to the terms and conditions set forth below.
- (a) **Publication Rights:** All print publication rights in the Literary Property (but not of a motion picture or television program created by Purchaser), including the right to publish the Literary Property, in any and all languages, in any and all Territories in the universe, in hardcover or softcover book form, "e-book" or "book-on-tape" or magazine form, subject to the Granted Rights, shall be considered "Publication Rights."
 - (b) **Non-Dramatic Radio Rights:** The right of Owner to exercise Non-Dramatic Radio Rights (e.g., the non-dramatic reading of the Literary Property) in the Literary Property is subject to the following conditions:
 - (i) During the period commencing on the date of the Purchase Agreement and ending either 7 years thereafter or 5 years after the Initial Release Date of the Picture (e.g., initial telecast of the pilot or first episode), whichever period shall first expire ("**Radio Restricted Period**"), Owner shall not exercise, authorize or permit any Party other than Purchaser to exercise such reserved Radio Rights.
 - (ii) After the expiration of the Radio Restricted Period, if Owner desires to exercise or dispose of the reserved Radio Rights, Purchaser shall have a Right of First Negotiation and Right of Last Refusal (First Refusal after a "**Holdback Period**" which shall be the earlier to occur of two years following production of the last episode of a Series hereunder or the reversion of the Granted Rights hereunder) with respect to the reserved Radio Rights.
 - (c) **Legitimate Stage Rights:** The right of Owner to exercise Legitimate Stage Rights in the Literary Property is subject to the following conditions:
 - (i) During the period commencing on the date of the Purchase Agreement and ending either 7 years thereafter or 5 years after the Initial Release Date of the Picture (e.g., initial telecast of the pilot or first episode), whichever period shall first expire ("**Legitimate Stage Restricted Period**"), Owner shall not exercise, authorize or permit any Party other than Purchaser to exercise such reserved Legitimate Stage Rights.
 - (ii) After the expiration of the Legitimate Stage Restricted Period, if Owner desires to exercise or dispose of the reserved Legitimate Stage Rights, Purchaser shall have a right of First Negotiation and Right of Last Refusal (First Refusal after the Holdback Period) with respect to the reserved Legitimate Stage Rights.
 - (d) **Author Written Sequel Rights:** The right of Owner to create or write 1 or more Author Written Sequels is subject to the following conditions:

- (i) The right to publish an Author Written Sequel, in any and all languages, in any and all Territories of the universe, in book (including "e books" and other book formats) or magazine form shall be considered **"Author Written Sequel Publication Rights."**
- (ii) During the period commencing on the date of the Purchase Agreement and ending either 7 years thereafter or 5 years after the Initial Release Date of the Picture (e.g., initial telecast of the pilot or first episode), whichever period shall first expire (**"Author Written Sequel Restricted Period"**), Owner shall not have the right to sell, assign, license or otherwise dispose of any Motion Picture or Allied Rights in or to any Author Written Sequel, other than the Author Written Sequel Publication Rights as provided in Paragraph 12(d)(i), to any Party other than to Purchaser, and neither Owner nor any other Party shall have the right to exploit any rights in or to any Author Written Sequel, other than the Author Written Sequel Publication Rights as provided in Paragraph 12(d)(i), without Purchaser's prior written consent.
- (iii) After the expiration of the Author Written Sequel Restricted Period, if Owner desires to exercise or dispose of any Motion Picture or Allied Rights in an Author Written Sequel, other than the Author Written Sequel Publication Rights as provided in Paragraph 12(d)(i), (which other rights are herein called the **"Restricted Reserved Author Written Sequel Rights"**), Purchaser shall have a Right of First Negotiation and Right of Last Refusal (First Refusal after the Holdback Period) with respect to the Restricted Reserved Author Written Sequel Rights, provided that if no agreement is reached between Owner and Purchaser pursuant to such negotiation then, subject to the rights of Purchaser set forth herein, the disposition of the Restricted Reserved Author Written Sequel Rights shall not include the right to produce or cause the production of a Motion Picture which contains any of the characters or incidents contained in the Literary Property or the right to exercise any Merchandising Rights or Commercial Tie-In Rights in such characters or incidents, or any other exploitation of such characters or incidents, including the right to license, manufacture, distribute and sell Sound Records which contain any of such characters or incidents.
- (e) Live Recital Rights: The right of Owner to authorize the performance of a non-dramatic reading of the Literary Property before a live audience (and/or "live" for television) but not the right to record such performance in any manner except in connection with the exercise of the Reserved Rights set forth herein shall be considered **"Live Recital Rights."**

13. DISTRIBUTION CONTROLS:

- (a) General: Fox shall have complete, exclusive and unqualified discretion and control as to the time, manner, and terms of its distribution, exhibition and exploitation of each Series episode (including the Pilot), separately or in connection with other programs, in accordance with such policies, terms and conditions and through such

parties as Fox in its business judgment may in good faith determine are consistent with business policy and proper or expedient and the decision of Fox in all such matters shall be binding and conclusive upon Lender and Owner. Fox makes no express or implied warranty or representation as to the manner or extent of any distribution or exploitation of each Series episode (including the Pilot) nor the amount of money to be derived from the distribution, exhibition and exploitation of each Series episode (including the Pilot), nor as to any maximum or minimum amount of such monies to be expended in connection therewith. Fox does not guarantee the performance by any Subdistributor, licensee or exhibitor, of any contract regarding the distribution and exploitation of each Series episode, including the Pilot.

(b) Dealings with Affiliates: Lender and Owner acknowledge that Fox is part of a diversified, multi-faceted, international company, whose affiliates include, or may in the future include, among others, exhibitors, television "platforms", networks, stations and programming services, video device distributors, record companies, internet companies, so-called "E.Commerce companies," publishers (literary and electronic) and wholesale and retail outlets (individually or collectively "**Affiliated Company or Companies**"). Lender and Owner further acknowledge that Fox has informed them that Fox intends to make use of Affiliated Companies in connection with its distribution and exploitation of the Series episodes (including the Pilot), as, when and where Fox deems it appropriate to do so. Lender and Owner expressly waive any right to object to such distribution and exploitation of any Series episode (including the Pilot) (or aspects thereof) or assert any claim that Fox should have offered the applicable distribution/exploitation rights to unaffiliated third parties (in lieu of, or in addition to, offering the same to Affiliated Companies). In consideration thereof, Fox agrees that Fox's transactions with Affiliated Companies will be on monetary terms comparable to the terms on which the Affiliate Company enters into similar transactions with unrelated third party distributors for comparable programs. Lender and Owner agree that their sole remedy against Fox for any alleged failure by Fox to comply with the terms of this Paragraph shall be actual damages, and Lender and Owner hereby waive any right to seek or obtain preliminary or permanent equitable relief or punitive relief in connection with any such alleged failure.

(c) Arbitration: Any dispute arising under the provisions of this Paragraph shall be arbitrated by, and under the rules of, J.A.M.S./Endispute ("JAMS") in binding arbitration in Los Angeles, California and before a mutually selected arbitrator experienced in the United States television industry. Although each side shall advance one-half of the fee of the arbitrator and for JAMS' services, the prevailing party in such arbitration shall be entitled to recover all costs of arbitration, including reasonable attorneys' fees and costs.

14. CHARACTERS, FICTIONALIZATION: It is expressly understood and agreed that a character or characters in any production based on the Life Story Rights or Literary Property may resemble Owner and/or members of Owner's family. Owner hereby grants to Fox, on behalf of herself and her family, the full right and authority to use Owner's, and Owner's family members' names, voices, likenesses and characteristics in and in connection with such character(s). Owner understands the need of producers of television and theatrical motion pictures to fictionalize portions of stories for dramatic interest. Owner agrees that Fox is and shall be free to fictionalize, in whole or in part, adapt, dramatize, rearrange, add to and/or subtract from the Literary Property and any Supporting Information provided by Owner, in the Program and any other productions produced hereunder. Owner understands that said

character(s) may contain some of Owner's characteristics and not others, and that said character(s) may participate in activities in which Owner actually participated, and in others in which Owner did not and that the same holds true with respect to the members of Owner's family. Furthermore, said character(s) may be portrayed by an actor or actors who may or may not resemble Owner or specific members of Owner's family. Owner hereby represents and agrees, on behalf of herself and her family, that Owner will not bring, institute or assert, or consent that others bring, institute or assert, any claim or action against Fox or Fox's Assigns on the grounds that anything contained in any production based on the Literary Property, or the advertising and publicity issued in connection therewith, is defamatory, reflects adversely on Owner, or violates any other rights whatsoever, including, without limitation, rights of privacy and publicity, and Owner hereby releases Fox and Fox's Assigns from and against any claims, demands, actions, causes of action, suits, costs, expenses, liabilities and damages whatsoever that Owner may now or hereafter have against Fox (except only Fox's failure to pay any compensation specifically set forth in this Agreement), in connection with any productions based on the Life Story Rights and/or Literary Property and the preparation, production, performance, broadcast, exhibition, distribution and/or exploitation thereof, or any other use or exploitation of the rights granted to Fox in this Agreement. Purchaser agrees that to the extent true-life events from Owner's life are portrayed in a program produced hereunder, it shall not portray Owner herself (or a member of her family) as engaging in criminal behavior.

15. **RELEASES:** Owner agrees to sign and Owner agrees to help obtain signed documents (provided that the failure to obtain such documents shall not itself be a breach by Owner of this Agreement) from such persons as Fox may require, including, without limitation, Owner's family members and acquaintances. Such releases shall be in the form of the release attached hereto as Exhibit "A" or otherwise in form and substance reasonably satisfactory to Fox's legal counsel. It is agreed that the preceding provisions of this Paragraph are a material covenant of this Agreement. Fox agrees that any payments that may be required to obtain such documents from third parties shall be made by Fox, subject to Fox's approving the amount and conditions of such payment.

16. **LEGAL CLEARANCE:** Upon Fox's request, Owner shall consult (subject to Owner's reasonable professional availability) and cooperate with Fox, or any third party rendering writing services in connection with the Programs, or any attorneys for Fox or any insurance company providing errors and omissions insurance for the Programs, in connection with the legal clearance of the Programs.

17. **SEPARATED RIGHTS:** If Owner is entitled to WGA separation of rights, then Owner agrees that pending execution of Fox's Separation of Rights Agreement, Fox nevertheless shall have the right to acquire any and all separated rights which may otherwise be reserved to Owner by reason of Article 16.B. of the WGA Agreement including, but not limited to, theatrical motion picture, legitimate stage, merchandising, literary publishing, television sequel rights and interactive rights, either separately or together, by payment to Lender, upon Fox's exercise of any such right(s), of the minimum compensation prescribed by the current WGA Agreement.

18. NOTICES AND PAYMENTS:

(a) To Lender and Owner: All written notices from Fox to Lender and/or Owner may be given to Lender, Owner or Owner's representatives by mail overnight delivery, messenger, or facsimile or at Fox's option, Fox may deliver such notice to Owner personally, either orally or in writing. Mailed notices will be effective upon mailing. Faxed, overnight delivery or messengered notices will be effective on the calendar date sent. Any oral notices given by Fox with respect to the suspension, extension or termination of this Option Agreement or the exercise of the Option is effective upon such oral notice but shall be promptly confirmed in writing. Payments and written notices to Lender and/or Owner shall be sent c/o William Morris Agency, 151 El Camino Drive, Beverly Hills, CA 90212, Attention: Lauren Whitney, Facsimile (310) 248-5608 with a courtesy copy to David Taghioff at the same address.

(b) To Fox: All notices from Lender and/or Owner to Fox shall be given in writing by mail, overnight delivery, messenger, or facsimile (and if sent by facsimile such notice shall be concurrently sent by mail) addressed as indicated below. The earlier of (i) actual receipt; (ii) 3 business days after the date of mailing; or (iii) the date of messengering, faxing or of personal service shall be deemed to be the effective date of notice.

Mail: Twentieth Century Fox Television, a unit of
Twentieth Century Fox Film Corporation
P.O. Box 900
Beverly Hills, California 90213
Attention: Legal Affairs

Messenger: Twentieth Century Fox Television, a unit of
Twentieth Century Fox Film Corporation
2121 Avenue of the Stars, Suite 430
Los Angeles, California 90067
Attention: Legal Affairs

Facsimile: (310) 369-1872

(c) Notice Dates: Any notice date which is a non-business day (i.e., Saturday, Sunday or industry holiday), or any notice period which expires on a non-business day, shall be automatically extended to the next business day.

19. REVERSION:

(a) General: If Fox develops and/or produces a Presentation and/or Pilot which is not produced as a Series, the Granted Rights (which shall not include any rights in the Presentation and/or Pilot or materials developed by Fox), in and to the Property, shall revert following the later of either: (i) one year following completion of principal photography of a Pilot or Presentation, or (ii) one year following expiration of any applicable network (or other licensee) hold. If a Presentation, Pilot, or Series is not produced, the Granted Rights shall revert following the later of either: (i) expiration of the Option Period, or (ii) expiration of any applicable network (or other licensee) hold (not to exceed 12 months following the expiration of the Option Period).

(b) Series: If a Series is produced, the right to make new derivative productions based solely on the Granted Rights shall revert to Owner as follows:

- (i) Less than 22 Episodes Produced: Eighteen (18) months after the earlier of the Initial U.S. television broadcast of the last episode produced of the Program, or the end of the broadcast season for which such episode was produced.
 - (ii) 22 to 44 Episodes Produced: Thirty-six (36) months after the earlier of the initial U.S. television broadcast of the last episode produced of the Program, or the end of the broadcast season for which such episode was produced.
 - (iii) 45 to 66 Episodes Produced: Ten years (10) after the earlier of the initial U.S. television broadcast of the last episode produced of the Program, or the end of the broadcast season for which such episode was produced.
 - (iv) 67 or more Episodes Produced: There shall be no reversion of the Granted Rights.
 - (v) Nothing contained herein shall limit Fox's right to produce works that are based on material that was not the subject of the Granted Rights, and Owner shall have no right hereunder to any material that was not part of the original Granted Rights.
- (d) If a reversion occurs pursuant to paragraphs (a) or (b) and Owner desires to sell, assign or license Owner's rights in the Granted Rights in and to the Property, for a period of 3 years following such reversion Fox shall have a right of first negotiation and right of first refusal with respect to such sale, assignment or license of Owner's rights.

20. SPIN-OFFS/PREQUELS/SEQUELS/REMAKES OF SERIES: For purposes of this Agreement, "spin-off" shall mean a spin-off, prequel, sequel, or remake of the Series. For (i) a generic spin-off or television prequel or sequel that is based upon or incorporates the Granted Rights, Owner shall receive [REDACTED] of the applicable rate of Royalty and MAGR to which Owner is entitled from the original Series; and (ii) for a planted spin-off or television remake, Owner shall receive no passive payments unless the character that is planted in the original Series is based upon or derived from the Granted Rights, in which case Owner shall receive [REDACTED] of the applicable rate of Royalty and MAGR to which Owner is entitled from the original Series.

21. THEATRICAL RELEASE: [REDACTED] of fees for the Pilot or Series episode released theatrically in accordance with Fox's customary [REDACTED] definition.

22. MISCELLANEOUS:

- (a) Assignment: This Purchase Agreement is non-assignable by Lender or Owner, however, it may be assigned freely by Fox, in whole or in part, to any Party, without restriction, and such assignment shall be binding upon Lender and Owner but no such assignment shall relieve Fox of its obligations to Owner under this Agreement unless the assignee is a Major Motion Picture Studio, Mini-Major Motion Picture Studio or Network or other financially responsible party that assumes such obligations to Owner hereunder in writing.

(b) Owner's Remedies: Each of Lender and Owner confirms that in the event of any failure or omission by Fox constituting a breach of any of Fox's obligations under this Purchase Agreement, whether or not material, the damage, if any, caused Lender and/or Owner is not irreparable or sufficient to entitle Owner to injunctive or other equitable relief. Consequently, Lender's and/or Owner's rights and remedies shall be limited to the right, if any, to obtain damages at law and Lender and/or Owner shall not have any right in such event to terminate or rescind this Purchase Agreement or any of the rights granted to Fox hereunder or to enjoin or restrain any development and pre-production activities in connection with any Program and the production, advertising, promotion, distribution, exhibition or exploitation of any Program if the Option is exercised. Additionally, each of Lender and Owner agrees not to institute any action on the grounds that any changes, deletions, additions, or other use of the Literary Property has violated Owner's so-called "moral rights of authors".

(c) Travel: If Fox requires Owner to travel in connection with Owner's services hereunder, Fox shall provide Owner with first-class air travel, first-class hotel accommodations, ground transportation and [REDACTED] per diem, all in accordance with Fox's then customary policies for persons of Owner's stature.

(d) Insurance: Lender and Owner shall be insured by Purchaser's errors and omissions and general liability insurance policies for the Pilot and Series to the extent that Purchaser obtains and maintains such policies, subject to the terms, conditions and restrictions of such policies and endorsements thereto.

(e) Amendments: This Purchase Agreement may be amended or modified only by the written agreement of Lender, Owner and Fox.

(f) Relationship: This Purchase Agreement does not constitute a joint venture or partnership of any kind between the Parties.

23. ENTIRE AGREEMENT: This document ("**Purchase Agreement for Purchase of Literary Material**"), together with the Option Agreement and its Exhibits, the Standard Terms and Conditions thereto and Schedule 1 "Glossary," and the Personal Release which is Exhibit "A" hereto (all incorporated herein by this reference) expresses the binding and entire agreement ("**Purchase Agreement**") between Fox and Owner and shall replace and supersede all prior arrangements and representations, either oral or written, as to the subject matter hereof.

By signing in the spaces provided below, Owner and Fox accept and agree to all of the terms and conditions hereof.

TEMPERANCE BRENNAN LP.
("Lender")

By *Kathleen J. Reich*
Its *authorized member*
Federal I.D.

TWENTIETH CENTURY FOX TELEVISION, a
unit of Twentieth Century Fox Film Corporation
("Fox")

By *Samuel Randall*
Its *SVI*

ACKNOWLEDGMENT AND CONSENT

I hereby represent and warrant that Lender is authorized to enter into the above Agreement and I agree to be bound by the terms and conditions thereof to the same extent as though I were a party thereto, and, if I fail to do so, Fox shall have the same rights against me personally as if I had entered into the Agreement directly with Fox.

Kathleen J. Reich
KATHLEEN J. REICH ("Owner")
Social Security No.

EXHIBIT "A"

PERSONAL RELEASE

Twentieth Century Fox Television
P.O. Box 900
Beverly Hills, CA 90213
Attention: Legal Affairs

Ladies and Gentlemen:

Reference is made to that certain agreement ("Agreement") dated as of September 1, 2004 between Twentieth Century Fox Television ("you") and TEMPERANCE BRENNAN LP. f/s/o KATHY REICHS ("Grantor") relating to the option and acquisition of the exclusive motion picture, television and allied rights in and to the life and experiences of Grantor and the members of Grantor's immediate family and Grantor's acquaintances, including the undersigned (the "Life Story").

1. For good and valuable consideration, receipt of which is hereby acknowledged, I hereby irrevocably grant to you, your successors, licensees, agents and assigns, perpetually, exclusively and throughout the universe, the right to use my name, likeness and biography, and the right to fictionalize same, and to portray, impersonate or simulate me in any way whatsoever, and to make use of any incidents or episodes of my life that have occurred relating to the Life Story, factually, or any combination thereof, in the preparation, production, performance, broadcast, exhibition, distribution and exploitation of one or more motion pictures or other productions or works based in whole or in part upon the Life Story, and any ancillary and allied rights therein and thereto (hereinafter all of said motion pictures, productions and works, and the ancillary and allied rights therein and thereto being collectively referred to as the "Productions"), subject to the terms and conditions of the Agreement.
2. You may employ any actor to portray me in the Productions and you may include in the Productions such actual and/or fictional incidents, scenes, situations, dialogue, events, characters and other material as you, in your sole discretion, shall determine.
3. The Productions, and any parts thereof, may be broadcast, exhibited, distributed and exploited in any and all media and technology, now known, or hereafter devised, throughout the universe, in perpetuity, without any obligation of any kind whatsoever to me. This grant shall apply and extend to advertising, promotion, publicity and merchandising relating to the Productions.
4. I hereby represent and agree that I will not bring, institute or assert, or consent that others bring, institute or assert, any claim or action against you or your subsidiaries, affiliates, parent and related companies and your and their successors, assigns, licensees, officers, directors, shareholders, employees, agents or attorneys (collectively, "Assigns") on the ground that anything contained in the Productions, or the advertising and publicity issued in connection therewith, is defamatory, reflects adversely on me, violates any other rights whatsoever, including, without limitation, rights of privacy and publicity, and I hereby release you and your Assigns from and against any claims, demands, actions, causes of action, suits, costs,

expenses, liabilities and damages whatsoever that I may now or hereafter have against you or your Assigns, in connection with the Productions and the preparation, production, performance, broadcast, exhibition, distribution and/or exploitation thereof, or any other use or exploitation of the rights granted to you hereunder.

5. I represent and warrant that I am free to enter into this agreement and grant to you all rights herein granted and to release all matters herein released; that I have not entered into any agreements or commitments inconsistent with the provisions of this agreement and I will not enter into any such agreements or commitments; that I have in no way conveyed, transferred, hypothecated, assigned or otherwise disposed of the rights granted hereunder or matters released hereunder to any person, firm or corporation; and that I have not done or permitted to be done any act or thing by which any of the rights granted hereunder have been or would in any way be impaired or diminished.

6. Nothing contained herein shall in any way obligate you to use any of the rights granted hereunder or to prepare, produce, exhibit, distribute or exploit any Productions, or to otherwise use any of the rights granted herein.

7. You shall not be obligated to obtain any further consent from me, or make any additional payment to me, to exercise any or all of the rights granted to you hereunder.

8. You shall have the right to assign this agreement, and any of your rights hereunder, in whole or in part, to any person, firm or corporation.

9. Nothing contained herein shall be construed to be or operate in derogation or limitation of any rights to which you may be entitled as a member of the public even if this agreement was not in existence.

Very truly yours,

Kathleen J. Perchs
NAME (Please Print)

Kathleen J. Perchs
Signature

AGREED TO AND ACCEPTED:

TWENTIETH CENTURY FOX TELEVISION,
a unit of Twentieth Century Fox Film
Corporation

Address 

By Samuel Marshall
Its SW

Date: 4/22/05

OPTION AGREEMENT FOR PURCHASE OF
LITERARY MATERIAL AND LIFE STORY RIGHTS

"MONDAY MOURNING" / KATHLEEN J. REICHS LIFE STORY RIGHTS

Option Agreement dated as of September 1, 2004, between TEMPERANCE BRENNAN LP a Delaware partnership ("**Lender**") f/s/o KATHLEEN J. REICHS ("**Owner**"), and TWENTIETH CENTURY FOX TELEVISION, a unit of Twentieth Century Fox Film Corporation, a Delaware corporation ("**Fox**").

1. PROPERTY:

(a) Literary Property: That certain published book entitled *Monday Mourning* written by Owner, shall be referred to herein as the "**Literary Property**".

(b) Life Story Rights: The life story of Owner limited to the events and experiences contained in the Literary Property and/or her career as a forensic anthropologist, as well as personal and professional events reasonably related to her career as a forensic anthropologist (the "**Life Story Rights**"). The Literary Property and the Life Story Rights are hereafter sometimes individually and collectively referred to as the "**Work**".

2. GRANT OF OPTION: Lender and Owner hereby grant to Fox, its successors and assigns, the exclusive and irrevocable right and option ("**Option**"), for the Option Period(s) and consideration specified in Paragraph 3, to purchase from Lender and Owner, upon the terms and conditions set forth in that certain Purchase Agreement for Purchase of Literary Material between Lender f/s/o Owner and Fox, together with all Exhibits, Schedules and attachments thereto ("**Purchase Agreement**") (as specified and subject to the reversion and Reserved Rights provisions set forth therein), all rights of every kind and nature whether now known or hereafter devised, in and to the Literary Property ("**Granted Rights**") as such rights are more particularly set forth herein and in the Purchase Agreement.

3. OPTION PERIOD AND CONSIDERATION: As consideration in full for the grant by Lender and Owner to Fox of the Option and for all the representations, warranties and agreements made by Owner hereunder, Fox shall pay to Lender the following amounts and the Option shall be effective during the following periods:

(a) Initial Option Period: The Option shall be effective during the one year period commencing on the date hereof and ending August 31, 2005 ("**Initial Option Period**"). Fox shall pay Lender [REDACTED] for the Literary Property and [REDACTED] for the Life Story Rights for the Initial Option Period (i.e., [REDACTED] total and as a single Option) payable upon receipt by Fox of this Option Agreement and the Purchase Agreement and the Exhibits signed by Owner. These sums shall be fully applicable against Owner's Pilot Producing Fee (but not the Purchase Price) set forth in the Purchase Agreement.

(b) Extended Option Period: Fox shall have the right to extend the period during which the Option shall be effective for an additional period of one year following the Initial

Option Period ("**Extended Option Period**") by serving upon Owner written notice of the extension thereof ("**Extension Notice**") in the manner set forth in Paragraph 11 on or before the date the Initial Option Period would otherwise expire. Fox shall pay Lender [REDACTED] for the Literary Property and [REDACTED] for the Life Story Rights for the Extended Option Period, payable forthwith upon the date of service of the Extension Notice. Said sum shall not be applicable against the Purchase Price.

(c) **Event of Force Majeure/Claims Extension:** If there is any event of Force Majeure, during the Initial Option Period and/or the Extended Option Period, as applicable, which materially affects the development and/or production of a program based on the Work, then the Initial Option Period and/or the Extended Option Period, as applicable, shall be extended by a period equal to the duration of such event of Force Majeure (not to exceed 90 days aggregate). In addition, if during the Initial Option Period and/or the Extended Option Period, as applicable, there shall be any claim (other than a claim of a frivolous or meritless nature as determined by Fox in its reasonable discretion), whether or not such claim shall result in or be followed by litigation, which would constitute a breach of any of Lender and/or Owner's warranties, representations or agreements herein contained or incorporated herein by reference that materially affects the development and/or production of a program based on the Work ("**Program**"), the Initial Option Period and/or the Extended Option Period, as applicable, shall be extended for a period of time equal to the period of time such claim is outstanding or unresolved.

The Initial Option Period, together with any extension pursuant to Paragraphs 3(b) and 3(c) shall be deemed the "**Option Period**".

4. **DEVELOPMENT DURING OPTION PERIOD:**

(a) **Fox Customary Development:** Fox shall have the right throughout the Option Period to engage in all customary development and pre-production activities in connection with the Work, including the preparation and submission of treatments, screenplays, teleplays and all other writings based in whole or in part upon the Work for use in connection with any of the Granted Rights. All of the results and proceeds of any such activities shall at all times be the sole and exclusive property of Fox whether or not the Option is exercised.

(b) **Owner's Development Consultation:** During the Option Period, Lender shall furnish Owner's non-writing, non-exclusive consultation services to Fox as and if requested by Fox.

5. **OWNER'S REPRESENTATIONS AND WARRANTIES:** The representations and warranties set forth in Paragraph 3 of the Purchase Agreement are incorporated herein by reference. Lender and Owner represent, warrant and agree that to the best of their knowledge and reasonable ability to determine as of the date hereof all such representations and warranties are true and correct and shall survive throughout the Option Period and expiration or termination of this Option Agreement, irrespective of whether the Option is exercised by Fox.

6. **EXERCISE OF OPTION:**

(a) **Notice of Exercise:** If Fox elects to exercise the Option, Fox, at any time during the Option Period, shall serve upon Owner notice of the exercise in the manner set forth

in Paragraph 11 and shall specify in such notice whether the Option is exercised for the Literary Property and the Life Story Rights or just the Life Story Rights. Whether or not Fox serves such notice as specified in Paragraph 11, commencement of taping or principal photography of any Program based on the Work during the Option Period shall be deemed to be the exercise of the Option for those rights incorporated in the Work and shall automatically constitute proper notice thereof and shall require prompt payment of the applicable Purchase Price.

(b) Signature of Purchase Agreement: Concurrently herewith Lender and Owner are signing the undated Purchase Agreement. If Fox exercises the Option, then Fox shall insert the date of the exercise of the Option as the date of the Purchase Agreement and shall sign the Purchase Agreement and deliver a fully signed original to Owner, and the signature of the Purchase Agreement by Lender, Owner and Fox shall be deemed final and effective, and the Purchase Agreement shall be a valid and binding instrument and shall irrevocably vest in Fox all of the Granted Rights (subject to the Reserved Rights and reversion provisions hereof). If Fox does not exercise the Option, then the Purchase Agreement shall be deemed void and of no force or effect whatsoever and Fox will execute such documents as are reasonably necessary to evidence such effect.

(c) Signature of Short Form Assignments: Concurrently herewith, Lender and Owner shall execute and deliver to Fox, with notarial acknowledgment, the attached short-form assignment in the form of Exhibit "A" ("**Short Form Assignment**") attached hereto, which assignment may be recorded with the United States Copyright Office; provided, however, that in the event the Option is not exercised by Fox in accordance with the terms hereof, the executed copy of the Short Form Assignment shall be deemed void and of no force or effect whatsoever and Fox shall execute documents reasonably required by Owner confirming the same. It is agreed that notwithstanding the failure of Lender and/or Owner to execute copies of the Purchase Agreement and Exhibit "A", the Rights granted to Fox under said agreements shall be deemed vested in Fox as of the date of the exercise of the Option, if full and timely payment of all compensation payable by Fox to Lender has been made; it being understood that a payment shall be deemed timely for purposes of this Paragraph if made within 10 days after receipt by Fox of a written notice by Owner that such payment is due and has not been received.

7. RESTRICTIONS: During the Option Period, neither Lender nor Owner shall exercise or otherwise utilize any of the Granted Rights, nor shall Lender or Owner use or permit the use of any other rights Lender and/or Owner has of any kind, in any manner or for any purpose that would unfairly compete with, interfere with or conflict with the full and unrestricted use of the Granted Rights.

8. PUBLIC DOMAIN MATERIAL/MEMBER OF THE PUBLIC: Paragraph 4 of the Purchase Agreement is incorporated herein by reference.

9. FURTHER DOCUMENTATION: At Fox's request, Lender and Owner agree to procure for Fox properly executed documents and other proof of a clear chain of title in Owner of the rights herein granted. If Fox exercises the Option, Lender and Owner, without cost to Fox (other than the consideration provided for herein or in the Purchase Agreement), shall execute, acknowledge and deliver to Fox, or shall cause the execution, acknowledgement and delivery to Fox of, such further agreements, documents or other materials as Fox may reasonably require

in order to evidence, support or effectuate the purposes of this Agreement, including, without limitation, a "Publisher's Release" in the form of Exhibit "B" attached hereto. If Lender and/or Owner shall fail to execute, acknowledge and deliver or to cause the execution, acknowledgment and delivery to Fox of any documents required by Fox hereunder after a reasonable opportunity to review and comment on such documents, Fox is hereby irrevocably granted the power coupled with an interest, with rights of substitution and delegation, to sign such instruments and to take such other steps and proceedings as may be necessary in the name and on behalf of Lender and Owner as Lender and Owner's attorney-in-fact if Lender and/or Owner has not complied with Fox's request within 7 days thereafter (or such shorter period as Fox shall reasonably require). Copies of any such documents executed by Fox shall be provided to Owner.

10. SUPPORTING INFORMATION: Owner further agrees to furnish to any persons designated as Fox's representatives, for such period(s) of time as Fox determines to be reasonably necessary, all information, data, documents, clippings, photographs, records and other material (all of the foregoing to be referred to hereinafter as the "**Supporting Information**") in Owner's possession or under Owner's control, relating to the Work or to any other matter depicted or referred to in the Program(s), excluding material subject to a journalistic privilege (if any such privilege applies). The Supporting Information may include anecdotes, information, stories, and other oral or written material. To the extent any of the Supporting Information is physical in nature (e.g., diaries, photographs, etc.), Fox agrees to protect, with all reasonable ability, all such Supporting Information; and to return same, or any portion possible thereof, to Owner at its request. It is expressly understood and agreed that Fox shall be free to use the Supporting Information in and in connection with the Program or any other production based in whole or in part on the Work in any manner that Fox reasonably deems appropriate or may refrain from using the Supporting Information, all in its sole discretion.

11. NOTICES AND PAYMENTS:

(a) To Owner: All written notices from Fox to Lender and/or Owner may be given to Owner or Owner's representatives by mail, overnight delivery, messenger, or facsimile or at Fox's option, Fox may deliver such notice to Owner personally, either orally or in writing. Mailed notices will be effective upon mailing. Faxed, overnight delivery or messengered notices will be effective on the calendar date sent. Any oral notices given by Fox with respect to the suspension, extension or termination of this Option Agreement or the exercise of the Option shall be effective upon such oral notice but shall be promptly confirmed in writing. Payments and written notices to Owner shall be sent c/o William Morris Agency, 151 El Camino Drive, Beverly Hills, CA 90212, Attention: Lauren Whitney, Facsimile (310) 248-5806 with a courtesy copy to David Taghioff at the same address.

(b) To Fox: All notices from Lender and Owner to Fox shall be given in writing by mail, overnight delivery, messenger, or facsimile (and if sent by facsimile such notice shall be concurrently sent by mail) addressed as indicated below. The earlier of (i) actual receipt; (ii) 3 business days after the date of mailing; or (iii) the date of messengering, faxing or of personal service shall be deemed to be the effective date of notice.

Mail: Twentieth Century Fox Television, a unit of
Twentieth Century Fox Film Corporation
P.O. Box 900
Beverly Hills, California 90213
Attention: Legal Affairs

Messenger: Twentieth Century Fox Television, a unit of
Twentieth Century Fox Film Corporation
2121 Avenue of the Stars, Suite 430
Los Angeles, California 90067
Attention: Legal Affairs

Facsimile: (310) 369-1872

(c) Notice Dates: Any notice date which is a non-business day (i.e., Saturday, Sunday or industry holiday), or any notice period which expires on a non-business day, shall be automatically extended to the next business day.

12. MISCELLANEOUS:

(a) Assignment: This Agreement is non-assignable by Lender or Owner, however it may be assigned freely by Fox, in whole or in part, to any Party without restriction, and such assignment shall be binding upon Lender and Owner, but no such assignment shall relieve Fox of its obligations to Owner under this Agreement unless the assignee is a Major Motion Picture Studio, Mini-Major Motion Picture Studio or Network or other financially responsible party that assumes such obligations to Owner hereunder in writing.

(b) Owner's Remedies: Lender and Owner confirm that in the event of any failure or omission by Fox constituting a breach of any of Fox's obligations under this Agreement, whether or not material, the damage, if any, caused Lender and/or Owner is not irreparable or sufficient to entitle them to injunctive or other equitable relief. Consequently, Lender's and Owner's rights and remedies shall be limited to the right, if any, to obtain damages at law and neither Lender nor Owner shall have any right in such event to terminate or rescind this Agreement or any of the rights granted to Fox hereunder or to enjoin or restrain any development and preproduction activities in connection with the Work or the production, advertising, promotion, distribution, exhibition or exploitation of production based on the Work if the Option is exercised.

(c) Amendments: This Agreement may be amended or modified only by the written agreement of Lender, Owner and Fox.

(d) Relationship: This Agreement does not constitute a joint venture or partnership of any kind between the Parties.

13. ENTIRE AGREEMENT: This Option Agreement, together with the following which are incorporated herein by reference: (a) the Purchase Agreement; (b) the Short Form Assignment, which is Exhibit "A"; (c) the Publisher's Release, which is Exhibit "B"; (d) Fox's Standard Terms and Conditions for Option and Purchase of Literary Material, which is Exhibit "C"; and (e)

Schedule "1" – Glossary, expresses the binding and entire Agreement between Fox, Lender and Owner and shall replace and supersede all prior arrangements and representations, either oral or written, as to the subject matter hereof.

By signing in the spaces provided below, Owner and Fox accept and agree to all of the terms and conditions hereof.

TEMPERANCE BRENNAN LP.
("Lender")

TWENTIETH CENTURY FOX TELEVISION, a
unit of Twentieth Century Fox Film Corporation
("Fox")

By Kathleen Reich
its Authorized Member

By Samuel Hamdall
its SVP

Federal I.D. [REDACTED]

ACKNOWLEDGMENT AND CONSENT

I hereby represent and warrant that Lender is authorized to enter into the above Agreement and I agree to be bound by the terms and conditions thereof to the same extent as though I were a party thereto, and, if I fail to do so, Fox shall have the same rights against me personally as if I had entered into the Agreement directly with Fox.

Kathleen Reich
KATHLEEN J. REICHS ("Owner")

Social Security No [REDACTED]

EXHIBIT "A"

SHORT FORM ASSIGNMENT

"MONDAY MOURNING"

ASSIGNMENT: For good and valuable consideration, receipt of which is hereby acknowledged, the undersigned, TEMPERANCE BRENNAN LP ("Owner"), hereby transfers and assigns to TWENTIETH CENTURY FOX TELEVISION, a division of Twentieth Century Fox Film Corporation ("Purchaser"), its successors and assigns forever, certain rights in and to that certain book written by Owner entitled "MONDAY MOURNING" and owned by Owner ("Literary Property") as more specifically set forth in that certain AGREEMENT FOR PURCHASE OF LITERARY MATERIAL between Owner and Purchaser dated as of September 1, 2004.

WARRANTIES: Owner represents and warrants that said Literary Property was published by Simon & Schuster, Inc. on June 7, 2004 and was registered for copyright in the name of Owner under copyright registration number TX-5-997-943 in the Office of the United States Register of Copyrights, Washington, D.C.

CONTROLLING DOCUMENT: This transfer and assignment is subject to all the terms and conditions of the Agreement for Purchase of Literary Property dated as of September 1, 2004 [("Purchase Agreement Date")] between Owner and Purchaser.

IN WITNESS WHEREOF, the undersigned has executed this document on _____, 2005, effective as of the date of exercise of the Option pursuant to the aforesaid Agreement for Purchase of Literary Material.

TEMPERANCE BRENNAN LP.
("Lender")

By *Kathleen Mercer*
its *authorized member*

Federal I.D. [REDACTED]

State of North Carolina
County of Mecklenburg

On 4/22/05, before me, Marion Epperson,
Date Name of Notary
personally appeared Kathleen J. Leicks,
Name(s) of Signer(s)

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Signature (seal)

Marion Epperson
Signature of Notary Public
My Commission Expires October 25, 2005

EXHIBIT "B"

PUBLISHER'S RELEASE

TWENTIETH CENTURY FOX TELEVISION, a
division of Twentieth Century Fox Film
Corporation
P.O. Box 900
Beverly Hills, California 90213

Re: "MONDAY MOURNING"

Gentlemen:

Please be advised that the undersigned, SIMON & SCHUSTER, INC. specifically acknowledges and agrees, for the express benefit of TWENTIETH CENTURY FOX TELEVISION, a division of Twentieth Century Fox Film Corporation, and its representatives, successors, assigns, licensees and grantees, that the undersigned has no claim to or interest in the worldwide motion picture rights (silent or sound) for any medium now known or hereafter devised, including without limitation rights of theatrical, television, video cassette, video disc, and Internet exhibition and distribution; radio rights; sound recording rights, legitimate stage rights, merchandising and commercial tie-up rights (including comic strips, picture books, coloring books, photo novels, "making of" books and the like) or any other rights of any kind in or to that certain literary work written by KATHY REICHS entitled MONDAY MOURNING ("**Work**") which was first published by SIMON & SCHUSTER, INC. on June 7, 2004 other than the publication rights heretofore granted to the undersigned by KATHY REICHS.

The undersigned hereby consents to, and agrees that it will make no objection to, the publication and copyright by you or your successors, assigns or licensees, forever, in any and all languages, in any and all countries of the world and in any form or media (including but not limited to hard cover, soft cover, press books, press notices, trade journals, periodicals, newspapers, heralds, fan magazines, small separate book lists and pictorial versions) of synopses, revised and/or abridged versions of the Work or any motion picture or other version thereof based in whole or in part upon the Work for any and all purposes; provided that no such synopses, revised or abridged versions shall include more than 7,500 words taken from the Work.

Notwithstanding anything to the contrary set forth above, the undersigned hereby consents to, and agrees that it will make no objection to, the publication and copyright, in any and all languages, in any and all countries in the world, in any form or media, by you or your successors, assigns or

licensees, forever, of screenplays, teleplays and scripts adapted from or based in whole or in part upon the Work or of novelizations of any screenplays, teleplays and scripts adapted from or based in whole or in part upon the Work.

IN WITNESS WHEREOF, the undersigned has executed this instrument on this _____ day of _____, 2005.

SIMON & SCHUSTER, INC.

By _____
Title

EXHIBIT "C"

STANDARD TERMS AND CONDITIONS

FOR OPTION AND PURCHASE OF LITERARY MATERIAL

"MONDAY MOURNING"

Standard Terms and Conditions of the Option Agreement for Purchase of Literary Material ("**Option Agreement**") dated as of September 1, 2004 and the Purchase Agreement for Purchase of Literary Material ("**Purchase Agreement**") (the Option Agreement and/or the Purchase Agreement, as applicable, shall be referred to herein as the "**Main Agreement**") dated as of the exercise of the Option pursuant to the Option Agreement, between TEMPERANCE BRENNAN LP. f/s/o KATHLEEN J. REICHS ("**Owner**") and TWENTIETH CENTURY FOX TELEVISION, a unit of Twentieth Century Fox Film Corporation ("**Purchaser**"), a Delaware corporation.

1. **INDEMNIFICATION:** Owner hereby agrees to indemnify Purchaser, Purchaser's successors, licensees and assigns, and the respective officers, directors, agents and employees of each of the foregoing (collectively, "**Indemnified Party(ies)**"), from and against any claims, costs, expenses, losses or damages (including reasonable attorneys' fees) occasioned by or arising out of a breach of any representation, warranty or agreement made by Owner herein. If any claim or action is asserted or filed by a third Party against any Indemnified Party, which written claim or action ("**Claim**") if true would constitute a breach of Owner's representations, warranties, and/or agreements hereunder, Purchaser shall give Owner prompt written notice thereof and Purchaser may, at Owner's expense, defend against any such Claim with counsel selected and retained by Purchaser, or, at Purchaser's election, Owner will defend Purchaser against any such Claim using counsel retained by Owner with the approval of Purchaser and such counsel shall consult fully with Purchaser concerning all aspects of such defense. Purchaser may compromise or settle such Claim upon such terms as Purchaser may deem reasonable for payment unless Owner shall furnish Purchaser with a surety bond or letter of credit in such form and in an amount and by a surety or financial institution satisfactory in all respects to Purchaser's Legal Department for the payment to Purchaser of such Claim. Pending determination of any such Claim, Producer may withhold all amounts due Owner hereunder in an amount related to the reasonable maximum exposure of such Claim; provided that, Purchaser shall not so withhold such amounts if Owner posts a bond or letter of credit as aforesaid. Purchaser shall release amounts so withheld if no formal legal proceedings are commenced within 1 year after such Claim is made or taken. Purchaser agrees similarly to indemnify Owner with respect to material added to the Literary Property by Purchaser or at Purchaser's request and with respect to the development, production, distribution and exploitation of the television program or other production or derivative thereof based upon the Literary Property by Purchaser. The provisions of this paragraph shall survive the termination of this Agreement.
2. **MOTION PICTURE AND ALLIED RIGHTS:** As set forth in the Purchase Agreement.
3. **VERSIONS OF THE LITERARY PROPERTY:** All rights granted to Purchaser hereunder may be exercised by Purchaser without the payment of any additional consideration by

Purchaser with respect to the Literary Property as presented to Purchaser and all other existing and future drafts, revisions, arrangements, adaptations, dramatizations, translations and other versions of the Literary Property which may heretofore have been written or which may hereafter be written by or with the sanction of Owner and all references to the Literary Property, including all of Owner's representations and warranties, shall be deemed to refer to all such existing and future versions of the Literary Property.

4. INSTITUTION OF LEGAL ACTION: Provided Purchaser has exercised its Option and paid the applicable Purchase Price, Owner hereby grants Purchaser the free and unrestricted right, at Purchaser's own cost and expense, to institute in the name and on behalf of Owner any and all suits and proceedings at law or in equity to enjoin and restrain any infringements of the rights herein granted. Owner does hereby assign to Purchaser any and all causes of action arising or resulting by reason of or based upon such infringements and any and all recoveries obtained in any such action. Owner agrees that Owner will not compromise, settle or in any manner interfere with any such litigation, if instituted; and Purchaser does hereby agree to indemnify and save harmless Owner from any costs or damages which Owner may suffer as a direct result of any such suits or proceedings instituted by Purchaser.

5. ADDITIONAL DOCUMENTATION: Owner agrees to execute and procure any other and further instruments consistent with the provisions of the Agreement necessary to convey, assign and copyright the rights in the Literary Property granted by Owner to Purchaser in any Territory throughout the universe. If it shall be necessary under the Laws of any Territory that copyright registration be acquired in the name of Owner, Purchaser is authorized by Owner to apply for said copyright registration in the name of Owner; and, in such event, subject to exercise of the Option by Purchaser, Owner shall and does hereby assign and transfer the same unto Purchaser. Owner further agrees to duly execute, acknowledge, procure and deliver to Purchaser such short form assignments as may be requested by Purchaser for the purpose of recording in the United States or elsewhere. If Owner shall fail to so execute and deliver or to cause the execution and delivery to Purchaser of the assignments or other instruments herein referred to after a reasonable opportunity to review and provide comments, Purchaser is hereby irrevocably granted the power coupled with an interest with rights of substitution and delegation to execute such assignments and instruments in the name and on behalf of Owner and as Owner's attorney-in-fact. Copies of any documents executed by Purchaser shall be provided to Owner.

6. COPYRIGHT OF LITERARY PROPERTY: If the Literary Property is hereafter published in any Territory in the universe, Owner shall take and complete, and shall require any Party operating under Owner's authority to take and complete, any and all steps and proceedings required by the Laws of any Territory within which such publication occurs to secure copyright in the Literary Property and to prevent the Literary Property from falling into the public domain by reason of such publication. Owner shall take such reasonable steps and proceedings as may be necessary to renew or extend any and all copyrights now or hereafter secured upon the Literary Property. As a material part of the consideration moving to Purchaser for its exercise of the Option, Owner, without the payment of any further consideration by Purchaser, shall (promptly upon any such renewal or extension) assign to Purchaser for such renewed or extended term all of the rights in the Literary Property which are granted to Purchaser under this Purchase Agreement. If Owner shall fail to do any of the things specified in this Paragraph, Purchaser is hereby irrevocably granted the power coupled with an interest with rights of

substitution and delegation and the right and authority to perform such acts and take such proceedings in the name and on behalf of Owner and as Owner's attorney-in-fact.

7. **PUBLICITY RESTRICTIONS:** Owner shall not, individually or by means of press agents or publicity or advertising agencies employed or paid by Owner, or otherwise, authorize, circulate, publish or otherwise disseminate any news stories or articles, books or other publicity of any kind relating directly or indirectly to the subject matter of this Purchase Agreement or the Picture. As between Purchaser and Owner, Purchaser shall be the owner and copyright proprietor of all such news stories, articles, books and other publicity. Nevertheless, Owner may disseminate publicity which contains Owner's name and identifies the Picture so long as such publicity is not an advertisement for the Picture and does not contain any language which is derogatory to the Picture or Purchaser.

8. **PURCHASER'S EXERCISE OF RIGHTS:** All rights, licenses, privileges and other property granted herein shall be cumulative and Purchaser may exercise or use any of them separately or in conjunction with any one or more of the others. Purchaser shall be under no obligation to exercise or put to use any of the rights acquired by Purchaser hereunder.

9. **REMEDIES:** All remedies accorded herein or otherwise available to any Party hereto shall be cumulative and no one such remedy shall be exclusive of any other. Except as may be limited in the Main Agreement and/or in these Standard Terms and Conditions and without waiving any rights or remedies under this Purchase Agreement or otherwise (a) any Party hereto may from time to time seek to recover by action, any damages arising out of any breach of this Purchase Agreement by any other Party hereto, and may institute and maintain subsequent actions for additional damages which may arise from the same or other breaches; (b) the commencement or maintaining of any action or actions by any Party hereto shall not constitute or result in the termination hereof unless such Party shall expressly so elect by written notice to the other Party; and (c) the pursuit of any remedy under this Purchase Agreement or otherwise shall not be deemed to waive any other or different remedy which may be available under this Purchase Agreement or otherwise, either at law or in equity.

10. **WAIVER:** A waiver by either Party of any term or condition of this Purchase Agreement in any instance shall not be deemed or construed to be a waiver of such term or condition for the future or any subsequent breach thereof.

11. **MISCELLANEOUS:**

(a) **Severability:** Nothing contained herein shall require the commission of any act or the payment of any compensation which is contrary to any Law. If there shall exist any conflict between this Purchase Agreement and any such Law, the latter shall prevail; and the provision or provisions hereof affected shall be curtailed, limited or eliminated to the extent (but only to the extent) necessary to remove such conflict; and as so modified, this Purchase Agreement shall continue in full force and effect.

(b) **Captions:** The captions used in connection with the paragraphs and subparagraphs of this Purchase Agreement are inserted only for the purpose of reference. Such captions shall not be deemed to govern, limit, modify or in any other manner affect the scope, meaning or intent of the provisions hereof; nor shall such captions otherwise be given any legal effect.

(c) Relationship: This Purchase Agreement does not constitute a joint venture or partnership of any kind between the Parties.

END OF STANDARD TERMS AND CONDITIONS

EXHIBIT "D"

CERTIFICATE OF ENGAGEMENT

"UNTITLED KATHY REICHS / HART HANSON PROJECT"

I, KATHLEEN J. REICHS ("Writer"), hereby certify that I have rendered and will continue to render services in connection with the television pilot, presentation or episode currently untitled and referred to as the UNTITLED KATHY REICHS / HART HANSON PROJECT within the scope of my employment as an employee of TEMPERANCE BRENNAN LP. ("Lender"), who is furnishing my services pursuant and subject to all of the terms and conditions of that certain borrowing agreement between Lender and TWENTIETH CENTURY FOX TELEVISION, a unit of Twentieth Century Fox Film Corporation, ("Producer"), entered into as of September 1, 2004 ("Agreement"). In connection therewith, I hereby represent, warrant and agree that (a) my services are rendered for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged; (b) the results and product of such services are being especially ordered from Lender by Producer for use as part of a television pilot, presentation or episode; (c) such results and product shall be considered a "work-made-for-hire" for Producer; and (d) Producer shall be considered, forever and for all purposes throughout the universe, the author thereof and the sole copyright owner thereof and the owner of all rights therein and of all proceeds derived therefrom and in connection therewith, with the right to make such changes therein and such uses and disposition thereof, in whole or in part, as Producer may from time to time determine as the author and owner thereof. I further represent, warrant and agree that, subject to Article 28. of the current WGA Agreement, if applicable, and except with respect to materials supplied to me by Producer and materials in the public domain (which shall not be a material or substantial part of the results and product of my services), (i) the results and product of my services hereunder were original with me; and (ii) to the best of my knowledge (including that which I should have known, in the exercise of reasonable prudence), the results and product of my services do not and will not defame, infringe or violate the rights of privacy or any other rights of any third party and are not the subject of any actual or threatened litigation or claim. I shall indemnify Producer, its affiliated entities, assigns and licensees against any loss, cost or damage (including reasonable outside attorneys' fees) arising out of or in connection with any breach of any of the aforesaid representations, warranties or agreements, and I shall sign such documents and do such other acts and deeds as may be reasonably necessary to further evidence or effectuate Producer's rights hereunder. Except with respect to matters constituting a breach by me of any of the above representations, warranties and/or agreements, Producer shall indemnify and defend me, Lender and our my successors-in-interest against any loss, cost or damage, claim or liability (including reasonable outside attorneys' fees), but not including any loss or cost or damage relating to any settlement entered into without Producer's written consent, arising out of the development, production, distribution and/or exploitation of the Program, and/or any other uses of the results and proceeds of my services under the Agreement. The Agreement may be assigned freely by Producer and such assignment shall be binding upon the undersigned and inure to the benefit of such assignee and such assignment shall be deemed a novation forever releasing and discharging Producer from any further liability or obligation to me, provided, however, that Producer shall remain secondarily liable thereunder unless said assignment is to an entity affiliated with, owned or controlled by or owning or controlling Producer, or which succeeds to substantially all of the assets of Producer,

or to a major or so-called "mini-major" production or distribution company, or to a television network, or to a similarly financially responsible entity which assumes all of Producer's obligations hereunder in writing. In the event of any conflict between the executed Agreement and this Certificate of Authorship, the executed Agreement shall control.

IN WITNESS WHEREOF, this document has been signed this _____ day of _____, 2005


KATHLEEN J. REICHS ("Artist")

The undersigned Lender confirms that (a) material heretofore and hereafter written by Artist under and pursuant to the Agreement are being specially ordered from Lender by Producer for use as part of a television pilot, presentation or episode and shall be considered a "work-made-for-hire" for Producer; (b) Producer shall be considered, forever and for all purposes throughout the universe, the author thereof and the sole copyright owner thereof; and (c) Lender agrees to be bound by the representations, warranties, agreement, covenants and indemnities of Artist set forth above.

IN WITNESS WHEREOF, I, the _____ of Lender have on this _____ day of _____, 2004 signed this confirmation.

TEMPERANCE BRENNAN LP. ("Lender")

By: 
Its:  member

Exhibit 3

EXECUTED**AGREEMENT FOR PILOT WITH SERIES OPTIONS****ORIGINAL****PLAYER: DAVID BOREANAZ**
MINOR: NO**LENDER (If Loan-Out): BERTHA BLUE, INC**
U.S. CITIZEN: YES**DATE: AS OF 3/2/2005****ROLE: "AGENT BOOTH"****TITLE: "BRENNAN" a/k/a "BONES"****LENGTH: 1 HOUR****I. PLAYER'S SERVICES IN PILOT**

Player agrees to render services in the Pilot, on a pay-or-play basis. All of Twentieth's obligations hereunder are expressly conditioned upon Twentieth finalizing a Pilot license agreement with the Licensee ("License Fee Contingency"); provided, however, that in the event that Twentieth directs Player to commence actual Pilot performing services hereunder, Player shall be deemed pay-or-play for the Pilot..

START DATE: TBD; but currently scheduled to commence in March 2005. **COMPENSATION:** In consideration of all rights granted and services rendered by Player hereunder in connection with the Pilot (including one run only thereof except with respect to foreign telecasts as set forth below), [REDACTED] plus an additional [REDACTED] payment*** for 20 consecutive work days plus 3 non-consecutive make-up/hair/wardrobe/rehearsal days plus 2 non-consecutive post production (i.e., looping, dubbing, retakes, added scenes and the like) days which shall be scheduled to reasonably accommodate Player's professional commitments prior to the Agreement plus non-consecutive travel days as required. Compensation for additional days requested by Twentieth, if any, shall be calculated on a pro-rata basis based on Player's above-referenced work days.

II. OPTIONS FOR PLAYER'S SERVICES IN SERIES ("Series"):

SERIES OPTIONS: Player grants Twentieth exclusive, irrevocable, consecutive, dependent options to require Player to render services in each Contract Year of the Series. Series Option for the First Contract Year is for episodes produced pursuant to the initial order in accordance with the guarantee/episodic compensation provision set forth below with an option for additional episodes produced in the First Contract Year in accordance with the guarantee/episodic compensation provision set forth below. Twentieth's option for Player's services in the additional episodes shall be exercised no later than 10 business days after Twentieth's written acceptance of the Licensee order for such additional episodes; provided, however, that if Twentieth requires Player to commence rendering actual services in connection with such additional episodes, Twentieth's option for Player's services in such additional episodes shall be deemed exercised. Series Options for subsequent years are for the Ratio of all episodes produced in each applicable year.

FIRST CONTRACT YEAR SERIES OPTION PERIOD: 6/30/05. Twentieth may extend such option period through 12/15/05 by written notice to Player no later than 6/30/05 and additional payment of [REDACTED] to Player which shall be paid no later than 10 business days following the date of such written notice. Player agrees that during the Series Option Period SAG TV 23.(c) shall apply.

OPTION EXERCISE FOR SUBSEQUENT CONTRACT YEARS: June 30 of the applicable year ; provided, however, if the Series premiere is telecast late midseason (i.e., on or after April 15, 2006), Twentieth may extend the option period for the Second Contract Year through September 15th, 2006 by written notice to Player no later than June 30, 2006 and payment in an amount equal to 1 episodic fee at the last episodic rate paid to Player, which shall be non-recoupable against Player's Second Contract Year Guarantee and shall be paid no later than 10 business days following the date of such written notice.

GUARANTEE/EPIODIC COMPENSATION: In consideration of all rights granted and services rendered by Player hereunder in connection with the Series (including one run only of each Series episode except with respect to foreign telecasts as set forth below), Player shall be paid the Episodic Compensation set forth hereinbelow. In the First Contract Year, Player guaranteed, pay or play, the following Ratio of episodes produced during the First Contract Year, but no less than the Minimum Number; provided, however, that if Twentieth does not exercise its option for additional episodes, said guarantee instead shall be the Ratio of episodes produced pursuant to the initial order, but no less than the Minimum Number. In subsequent Contract Years for which an option is exercised, Player guaranteed, pay-or-play, the following Ratio of episodes produced, but no less than the Minimum Number. In the First Contract Year, Twentieth may treat the Pilot as 1 episode. If Twentieth makes multi-segment episodes, each full segment will constitute 1 episode for purposes of Guarantee, and Episodic Compensation for 1 episode will be payable for each such segment.

Contract Year	Minimum Number	Ratio	Episodic Compensation*
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First:	6**	ASP	[REDACTED]
Second:	13***	ASP	
Third:	13	ASP	
Fourth:	13	ASP	
Fifth:	13	ASP	
Sixth:	13	ASP	
Seventh:	13	ASP	

*Twentieth shall have the right at its sole election at any time and from time to time to increase the Episodic Compensation. If the Series is a midseason start, the Episodic Compensation for services rendered on the first 13 episodes produced for the Second Contract Year shall be the same Episodic Compensation paid for the initial midseason Series order in the First Contract Year; provided, however, that in such event the total number of episodes paid at the First Contract Year Episodic Compensation shall not exceed 13 episodes. Regardless of the number of episodes produced during the First & Second Contract Years, the Episodic Compensation for the Third & subsequent Contract Years shall be as set forth.

**If the initial order is more than 6, then the Minimum Number shall be 7.

***If the Series is a midseason start, then the Minimum Number shall be 7.

"ASP" = All Shows Produced

Network cancellation of the Series shall not relieve Twentieth of the obligation to pay Episodic Compensation for the Minimum Number of episodes indicated.

III. TERMS AND CONDITIONS

RESIDUALS: ****To the extent permitted by SAG, the additional [REDACTED] payment is not Episodic Compensation, but is a prepayment of foreign residuals for the Pilot and each episode of the Series. Twentieth shall have the right at its sole election at any time and from time to time to pay the additional [REDACTED] payment as Episodic Compensation in which case such payment will not be treated as a prepayment of foreign residuals. The "Total Compensation" is defined as the Episodic Compensation plus, if applicable, the [REDACTED] prepayment of foreign residuals and shall be quoted as [REDACTED] Foreign TV-SAG Minimum; U.S. & Canada-SAG Minimum; Theatrical Use- [REDACTED] Supplemental Markets-SAG Minimum.

SCREEN CREDIT: On the Pilot (if telecast) and each Series episode in which Player recognizably appears, Player shall be accorded credit in the main/opening titles; on a separate card; grouped among the cards accorded to other Series regular actors; in (at Fox's election) first position among Series regular actors or in a "Lavonne & Shirley" format (e.g., two names on one card, but not stacked, in first position) for the credits of Player and the actor playing "Brennan"; in a type, size, boldness and duration (except as set forth in the previous clause) no less favorable than the credit accorded any other Series regular actor. All other aspects of such credit are at Twentieth's discretion.

RIGHTS AND SERVICES: Twentieth owns all rights in Player's services, name, likeness and voice in connection with the Role, Pilot, Series and each episode and Player grants Twentieth as a "work made for hire" all such rights in all material furnished, suggested or performed by Player or material owned or controlled by Player and incorporated or used in the Pilot or Series, to use and exploit in all media now known or hereafter devised, throughout the universe, in perpetuity. If Episodic Compensation exceeds the amounts set forth in SAG TV 14.(b), Episodic Compensation includes buy out of overall production and work time for full production season. To the extent permitted by SAG, the compensation payable in connection with the Pilot and each episode of the Series shall be deemed a prepayment of overtime and premium days. Player consents to the use of Player's name, voice, **approved (as set forth in the Rider)** likeness (actual or simulated, in character or otherwise related to Player's services hereunder only) and biography in merchandising. For merchandise that includes Player, Twentieth shall pay Player [REDACTED] of Merchandising Net Receipts reducible by amounts payable to royalty-bearing Series regular actors to a floor of [REDACTED] of Merchandising Net Receipts if Twentieth is obligated to make payments to another person in connection with the same merchandising item.

EXCLUSIVITY: Maximum required by the applicable Licensee as permitted by SAG. Player warrants that Player has no outstanding commitments which will materially interfere with the complete performance of all of Player's obligations nor shall Player enter into any commitment which materially conflicts or interferes with Player's obligations to Twentieth (which shall at all times be in first position) or with any rights granted to Twentieth pursuant to this Agreement. Player shall give Twentieth reasonable advance notice of any and all legal obligations of Player mandated by federal, state or local authority (e.g., jury duty) which might interfere with Player's services hereunder. In the event of any such obligation, Player shall cooperate fully with Twentieth in taking such action as Twentieth deem necessary to reschedule the obligation. Player's services shall be exclusive in television and series programming, subject to the following: provided Player is not in material default, Player may render unlimited non-identifiable voice over services, and make U.S. (subject to Twentieth obtaining Licensee approval, which Twentieth shall use good faith efforts to obtain but its failure to obtain same shall not be a breach of this Agreement), and non-U.S. telecast commercials (including, without limitation, infomercials); radio, talk, game, news, panel and award show guest (non-host, non-recurring) appearances and up to 3 other television guest appearances (including MOWs and mini-series if not longer than 4 telecast hours in the aggregate) during each 13-week period so long as such appearances are not in the Role or as a character substantially similar to the Role; are not in a role which is a continuing role; are not during production periods; are not on programs known at the time such engagement is accepted by Player to be scheduled to be telecast during the premiere week of the Series, at any time prior to November 15th in any Series Contract Year or during the regularly scheduled first run telecast time period of the Pilot or Series; and, are not on a program which, to the best of Player's knowledge, has as any sponsor, a sponsor whose products are a competitor with any product of a major sponsor of the Series (Player shall use reasonable efforts to obtain such program telecast information and inform Twentieth in a timely manner).

PROMOS: During production periods and, subject to Player's professional availability, outside production periods, Player will do Promos, at double SAG scale; residuals at scale. There shall be no crediting of such "overscale" compensation payable in connection with Player's services for Promos against other amounts payable under this Agreement or under SAG. There shall be no direct endorsement by Player of products/services in such promos.

PUBLICITY & RELATED SERVICES: During Series production periods, and, subject to Player's professional availability, outside Series production periods, Player will: (1) do standard openings, closings, lead-ins, lead-outs, Pilot, Series and episodic trailers, behind-scene shots, on-set interviews and other promotional footage (collectively, "Promotional Footage") for no additional compensation; (2) make not less than, as Twentieth may request, five promotional and institutional non-performing Series-related appearances per each Contract Year for non-paying audiences (including, at Twentieth's election and without limitation, the Television Critics Association Press Tour in July and January and the May up-front presentations in New York and international screenings in L.A.) for no additional compensation; and (3) do the Licensee's still photo gallery shoot, the Licensee's "on-air" image campaign, the Licensee's satellite press tour and such other publicity and related services as Twentieth or the Licensee may reasonably require in connection with the Pilot and/or Series for no additional compensation. If Player is required to travel in connection with the foregoing services, Twentieth will provide/reimburse such first class travel, accommodations, and expenses as required by SAG.

CONSENTS: Player consents to the use of Player's name, voice, **approved (as set forth in the Rider)** likeness (actual or simulated, in character or otherwise related to Player's services hereunder only) and biography, with no additional compensation to Player, in any and all media now known or hereafter developed, throughout the universe and in perpetuity, in connection with (1) the exploitation of the Pilot/Series or elements thereof; (2) any ancillary and subsidiary uses of the Pilot/Series or elements thereof; (3) the advertising, promotion and marketing of the Pilot/Series or elements thereof; (4) the "institutional" advertising of Twentieth, its affiliated companies and its licensees; (5) the advertising of products or services of Twentieth's and its Licensee's commercial sponsors (including, without limitation, commercial tie-ins, product placement and point-of-purchase campaigns), provided that such advertising occurs in conjunction with the publicizing, promotion, production or distribution of the Pilot/Series or elements thereof and does not constitute a direct endorsement of such product or service; (6) computer, Internet, CD Rom, DVD, replay, interactive, and other "new media" exploitation, and e-commerce related to the Pilot/Series or elements thereof; (7) literary and music publishing related to the Pilot/Series and elements thereof; and (8) sound recordings and jacket covers (whether or not Player's performance is contained therein) related to the Pilot/Series or elements thereof. Should Twentieth require Player's additional services beyond those required hereunder, Twentieth and Player will negotiate in good faith with respect to Player's compensation for such additional services as, when and to the extent required by SAG. For purposes of this Paragraph, "or elements thereof" shall include, without limitation, the use of Promotional Footage.

LAWS: Player agrees that the state and federal courts in Los Angeles County, California will have personal jurisdiction over Player, and will be the exclusive forum for any lawsuits arising out of this Agreement, and that California law (as governs contracts entered into and fully performed in California) will apply. If any provisions hereof are contrary to law, they will be modified to conform. Player will abide by "anti-payola" requirements.

PRODUCER'S REMEDIES: Twentieth will have the maximum rights available at law, equity and under SAG for Player's incapacity, default or material breach. For production interruptions due to causes beyond Twentieth's control, Twentieth's and Player's rights shall be in accordance with the provisions of Article 61. of the 2001 SAG Television Agreement. Player acknowledges that the services and the rights herein granted are of a special, unique, unusual, extraordinary and intellectual character giving them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages, and that Player's default or material breach will cause Twentieth irreparable injury and damage. If Twentieth in its discretion believes that Player may fail or refuse to perform hereunder, Twentieth may require written assurance of Player's intent to perform the requested services. If Twentieth does not receive such assurance within 24 hours (or less, if production exigencies exist),

then Player is in default and Twentieth reserves its rights and remedies pursuant to this agreement, at law and in equity. Player agrees that Twentieth shall be entitled to seek injunctive and other equitable relief if Player commits or threatens to commit a default or otherwise threatens to materially breach this Agreement. Twentieth may at any time, without legal justification or excuse, elect not to use Player's services or to have any further obligations to Player except any continuing obligations to pay residuals required by SAG, to accord Player credit on the Pilot and each Series episode in which Player recognizably appears, and to pay Player the Episodic Compensation with respect to the applicable employment period or Contract Year for which Twentieth has exercised its option and to perform any other obligation which has accrued hereunder prior to such election.

SPECIAL PROVISIONS:

This agreement shall be governed by either the SAG or AFTRA collective bargaining agreement as determined by Twentieth in its sole discretion. In that regard, the parties acknowledge that Twentieth may elect to have the AFTRA Code be applicable in lieu of the SAG Agreement, in which case references herein to SAG shall refer to AFTRA. In connection therewith, Player recognizes that certain rights granted under the SAG Agreement must be specifically consented to under AFTRA and, accordingly, Player consents to exhibition of the Pilot and Series in Supplemental Markets, use of excerpts containing Player's performances for minimum AFTRA program fees pursuant to Paragraphs 73.(d)(2), 73(d)(8) and 73(d)(10) of the Network TV Code, and crediting of Player's over-scale compensation against overtime, rest time, overall production and work time to the maximum extent permitted under Paragraph 56 of the Network TV Code. This Agreement shall be effective for all purposes as a binding agreement. If the Licensee is ABC, CBS, FBC, NBC, the WB or UPN, Player's services hereunder shall be pursuant to Licensee's customary requirements for Series regular actors, subject to the SAG Agreement. Player's services hereunder shall be conducted at all times by Player in a professional manner, and performed consistent with Twentieth's directions, practices and policies that reasonably relate to the services being provided. Incorporated in this Agreement by reference are Twentieth's Standard Terms which shall be subject to good faith negotiations within Twentieth's normal parameters for a performer of Player's stature in the TV industry. All of Twentieth's obligations are expressly conditioned upon Player's completion to Twentieth's satisfaction of Employment Eligibility Verification Form I-9.

NOTICES: All written notices from Twentieth to Player may be given by mail (effective upon mailing), by messenger, overnight delivery or fax and shall be sent to the address and/or fax number (as applicable) set forth below. Fax, overnight or messengered delivery will be effective on the calendar date sent. Any notice date which is a non-business day (i.e., Saturday, Sunday or industry holiday), or any notice period which expires on a non-business day, shall be automatically extended to the next business day.

This Agreement (including the Rider attached hereto and incorporated herein by this reference) constitutes the entire understanding between the parties concerning the subject matter hereof and shall not be modified or amended except by the written agreement of the parties. In the event of a conflict between this Principal Agreement and the Rider, the Rider shall control.

AGREED:

David Boreanaz ("Player")

Redacted
Player's Social Security Number

BERTHA BLUE, INC ("Lender")

By:

Title:

Redacted

Federal I.D. Number

TWENTIETH CENTURY FOX TELEVISION,
a unit of TWENTIETH CENTURY FOX FILM CORP.
P.O. Box 900, Beverly Hills, CA 90213
Attn: Legal Department; Fax 310.369.1872

By:

Samuel E. Bramhall

Its: SVP, Business Affairs

Player's Agent and Address:

Michael Katcher

Creative Artists Agency LLC

9830 Wilshire Boulevard

Beverly Hills, CA 90212

(310) 288-4545

(Phone)

(310) 288-9512

(Fax)

cc:

Eric Suddleson

Nelson Felker Toczek & Davis

10880 Wilshire Boulevard, Suite 2070

Los Angeles, CA 90024

**RIDER TO THE AGREEMENT FOR TEST WITH PILOT AND SERIES OPTIONS
DATED AS OF MARCH 2, 2005 BETWEEN TWENTIETH CENTURY FOX
TELEVISION AND BERTHA BLUE, INC. f/s/o DAVID BOREANAZ**

License Fee Contingency: If Twentieth does not conclude a license fee agreement with the applicable Licensee or make Lender unconditionally pay-or-play within 30 days following the date Twentieth exercises its Pilot option hereunder, this Agreement shall be in second position to bona fide, third party offers for pilot and/or series or other employment ("**Third Party Offer(s)**"); provided, however, Player shall notify Twentieth in writing of any such Third Party Offer(s) and Twentieth shall have one (1) business day following such notice to pre-empt said offer(s) by making Lender pay-or-play hereunder. Should Twentieth thereafter make Lender pay-or-play, Twentieth will be in first position, subject only to such pre-existing Third Party Offer(s), if any, for which Twentieth has not exercised its pre-emption rights as set forth above.

Payment of Pilot Compensation: In the event Twentieth exercises its Pilot option hereunder, subject to the License Fee Contingency, [REDACTED] of the Pilot compensation shall be payable no later than April 15, 2005 and the remainder no later than the earlier of June 30, 2005 or promptly following the completion of Pilot principal photography.

Producer Credit: Subject to network/licensee approval and subject to Twentieth exercising the applicable option, for each Series episode produced and broadcast for which Player has completed all material services commencing with the Third Contract Year, Twentieth shall accord Player "Co-Producer" credit on a separate card, in the main, opening or end titles wherever other producer credits appear (excluding the credits to any showrunners or Barry Josephson), in the same size, style and duration as other producer credits accorded in connection with the Series, excluding the credits to any showrunners and/or Barry Josephson. Except as expressly stated above, all characteristics of Player's credit will be determined by Twentieth. Any failure to accord Player credit will not be considered a breach of this Agreement and will not entitle Player to terminate this Agreement or seek injunctive relief. Upon written notice from Player, Twentieth will make reasonable efforts to correct future copies of the applicable episode for any credit error that may occur.

Contingent Compensation:

- a) **MAGR:** With respect to the Pilot/Series produced hereunder and subject to Lender's and Player's complete performance of all of the material terms and conditions of this Agreement, Lender shall be entitled to receive an amount equal to [REDACTED] of the Defined Modified Adjusted Gross Receipts ("MAGR"). The percentage of contingent compensation participation payable, if at all, to Lender shall vest 1/2 upon completion of Player's services in the First Contract Year and 1/2 upon completion of Player's services with respect to the Second Contract Year.

Definition: Lender's MAGR shall be computed, determined and paid pursuant to Twentieth's standard Television Definition of MAGR (with a [REDACTED] Television Distribution Fee and a [REDACTED] Fox Administrative Charge). The Television Distribution Fee will not be charged with respect to Gross Receipts derived from the initial network license or any extensions or renewals thereof. In the event that Twentieth enters into an agreement with a network for the renewal of a Series following the expiration of the initial network license ("Network Renewal") and such Network Renewal provides for the network to pay to Twentieth, prospectively, payments in excess of the pattern budget for such additional seasons of the Series ("Premium License Fee"), then Twentieth shall charge the Television Distribution Fee on the amount by which the Premium License Fee exceeds the pattern budget. Fox's standard MAGR definition, subject only to those changes as may be mutually agreed upon in writing following The remainder of the MAGR definition shall be good faith negotiation within Fox's customary parameters for persons of Artist's stature as of the date of this agreement. The remainder of the MAGR definition shall be Fox's standard MAGR definition, subject only to those changes as may be mutually agreed upon in writing following good faith negotiation within Fox's customary parameters for persons of Artist's stature as of the date of this agreement, but said definition shall include, among other things, the following:

- i. Series will not be cross-collateralized except that a Series may be cross-collateralized with a Pilot(s) and/or Presentation(s) on which it is based.
- ii. The Fox Financing Charge shall be [REDACTED]. There shall be no Fox Administrative Charge charged on Fox Financing Charge or Fox Financing Charge on Fox Administrative Charge or Fox Financing Charge on Fox Financing Charge.
- iii. Production costs will not include any third-party contingent compensation (excluding only fixed amount bonuses and royalties), advances or deferrals payable out of or measured by MAGR, net proceeds or other contingent compensation definition or calculation.
- iv. "Back-end" agency commissions (i.e., percentages of contingent compensation and/or deferments payable out of contingent compensation) will be deducted in the same manner as distribution expenses and will not otherwise reduce Lender's contingent compensation hereunder; and "front-end" agency commissions (i.e., percentages of license fee) will be deducted as items of production costs.

b) Distribution Controls:

- i. **General:** Twentieth shall have complete, exclusive and unqualified discretion and control as to the time, manner, and terms of its distribution, exhibition and exploitation of each Series episode (including the Pilot or Presentation), separately or in connection with other programs, in accordance with such policies, terms and conditions and through such parties as Twentieth in its business judgment may in good faith determine are consistent with business policy and proper or expedient and the decision of Twentieth in all such matters shall be binding and conclusive upon Lender and Player. Notwithstanding the foregoing, Fox shall accord good

faith (meaningful) consultation to Player with respect to the initial domestic off-network sales plan, subject to the reasonable availability and reasonable response time of Player. Twentieth makes no express or implied warranty or representation as to the manner or extent of any distribution or exploitation of each Series episode (including the Pilot or Presentation) nor the amount of money to be derived from the distribution, exhibition and exploitation of each Series episode (including the Pilot or Presentation), nor as to any maximum or minimum amount of such monies to be expended in connection therewith. Twentieth does not guarantee the performance by any Subdistributor, licensee or exhibitor, of any contract regarding the distribution and exploitation of each Series episode (including the Pilot or Presentation).

ii. **Dealings with Affiliates:** Each of Lender and Player acknowledges that Twentieth is part of a diversified, multi-faceted, international company, whose affiliates include, or may in the future include, among others, exhibitors, television "platforms", networks, stations and programming services, video device distributors, record companies, internet companies, so called "E.Commerce companies", publishers (literary and electronic) and wholesale and retail outlets (individually or collectively, "Affiliated Company or Companies"). Each of Lender and Player further acknowledges that Fox has informed Lender and Player that Twentieth intends to make use of Affiliated Companies in connection with its distribution and exploitation of the Series episodes (including the Pilot or Presentation), as, when and where Twentieth deems it appropriate to do so. Each of Lender and Player expressly waives any right to object to such distribution and exploitation of any Series episode (including the Pilot or Presentation) (or aspects thereof) or assert any claim that Twentieth should have offered the applicable distribution/exploitation rights to unaffiliated third parties (in lieu of, or in addition to, offering the same to Affiliated Companies). In consideration thereof, Twentieth agrees that Twentieth's transactions with Affiliated Companies will be on monetary terms comparable to the terms on which the Affiliated Company enters into similar transactions with unrelated third party distributors for comparable programs. Each of Lender and Player agrees that Lender's and/or Player's sole remedy against Twentieth for any alleged failure by Twentieth to comply with the terms of this paragraph shall be actual damages, and each of Lender and Twentieth hereby waives any right to seek or obtain preliminary or permanent equitable relief or punitive relief in connection with any such alleged failure.

iii. **Arbitration:** Any dispute arising under the provisions of this Paragraph shall be arbitrated by, and under the rules of, J.A.M.S. ("JAMS") in binding arbitration in Los Angeles, California and before a mutually selected arbitrator experienced in the United States television industry. Although each side shall advance one-half of the fee of the arbitrator and for JAMS' services, the prevailing party in such arbitration shall be entitled to recover all costs of arbitration, including reasonable outside attorneys' fees and costs.

Dressing Room: While Player is rendering services hereunder, Twentieth shall provide Player with a private, first class dressing room (exclusive during periods of production), which shall be

no less than a star wagon and which shall include customary first class amenities and, provided a hard line exists, a phone (Player to pay all non-Series related long-distance and toll charges - no cell phones), as are available at the particular production facility/site. Such dressing room shall be no less favorable than the dressing rooms provided to other Series regulars.

Domestic Photo/Likeness/Biography Approval: With respect to Twentieth's use of Player's likeness and biography (and Twentieth's provision of Twentieth-generated materials to the network licensee) in connection with the publicity and promotion of the Pilot/Series and/or elements thereof, Player shall have the following rights of approval, such approval not to be unreasonably or untimely withheld:

- a. **Still Photographs:** Still photography taken and distributed by Twentieth in which Player's likeness appears, provided that Player must approve: (i) 50% of all still photographs from each Pilot and Series episode submitted to Player in reasonable quantities in which Player appears alone; or (ii) 75% of all still photographs from each Pilot and Series episode submitted to Player in reasonable quantities in which Player appears with others. Still photographs taken directly from copies of the Pilot or episode of the Series delivered to the Licensee of the Series are hereby pre-approved.
- b. **Non-Photographic Likeness:** All non-photographic likenesses provided that Player provides Twentieth specific written objections in writing. If disapproved non-photographic likenesses are redrawn to meet Player's specific written objections, Player shall have a right of reasonable approval with respect to such redrawn non-photographic likenesses. If, after 1 redrawn non-photographic likeness, Player has not approved such likeness, Player may elect to have the non-photographic likeness redrawn, at Player's own expense, by an artist approved by Twentieth; provided that such redrawing can be completed within the time guidelines reasonably specified by Twentieth. If Player elects not to have the non-photographic likeness redrawn, Twentieth will select one of the existing likenesses.
- c. **Biographical Data:** Player's biographical data released by Twentieth, provided that Player gives Twentieth specific written objections to any disapproved biographical data.
- d. **Domestic Application Only:** All of the foregoing shall apply only to still photographs, non-photographic likenesses, and biographical data of Player that are intended for use in connection with the U.S. telecast or distribution of the Pilot and/or Series.
- e. **Time Limitations:** Player must approve the applicable percentage of each group of still photographs, each non-photographic likeness, and all biographical data within 3 business days of Twentieth's submission to Player or 2 business days with respect to material in which Player's still photograph, non-photographic likeness, or biographical data appears with others. Failure to disapprove any of

the foregoing within such time period (or shorter period in the case of publication and/or media deadlines) will be deemed approval of the submitted material.

Paid Ads: Subject to Twentieth's customary "Excluded Ads" (e.g., awards, nomination, congratulatory ads and the like in which only the honoree is mentioned, group ads, teasers, etc.), Twentieth shall accord Player credit in all paid ads issued by Twentieth or under its control in connection with the Series in which any other Series regular actor is accorded credit (other than a marquee value star); if any Series regular actor, other than a marquee value star and other than the nominee, award recipient, or subject of the congratulatory ad, is included in the Excluded Ad, Player also shall be accorded credit in such Excluded Ad. If Twentieth fails to comply with any paid ad provision of the Agreement, Twentieth agrees, upon written notice from Player which specifies such failure to comply, to take such steps as are reasonably practicable to cure such failure with respect to future paid ads.

Hair/Make-up/Wardrobe: Subject to applicable union guidelines and budgetary limitations, while Player is rendering Pilot and Series services hereunder, Twentieth shall consult with Player regarding Player's hair, make-up, and wardrobe.

Series Payment: Excluding the First Contract Year, if Twentieth exercises its option for Player's Series services for a Contract Year, Twentieth shall commence Lender's episodic payments no later than September 1 of the applicable year (excepting only the Second Contract Year if Twentieth has exercised its extension option, in which event payments shall start no later than October 1), regardless of whether actual production of the Series has begun, subject to Twentieth's rights under the Agreement in the event of Lender's or Player's incapacity or default, or production interruption due to labor disputes and/or causes beyond Twentieth's control.

Worker's Compensation: Player's services hereunder shall be subject to all applicable workers' compensation statutes of the United States.

Videocassette: Upon Player's request following telecast of the Pilot, Twentieth shall provide Player with a ½ inch videocassette or DVD (at Twentieth's sole election) copy of any Pilot hereunder in which Player recognizably appears for Player's personal, non-commercial use.

Assignment and Lending: The Agreement is non-assignable by Lender or Player except to an entity owned and controlled by Player and which has the exclusive right to furnish Player's services provided for in the Agreement, provided, however, that such assignment must be made prior to commencement of services for the First or subsequent applicable Contract Years, and shall be effective with respect to the then upcoming and subsequent Contract Years. The Agreement shall inure to the benefit of Twentieth's successors, assignees, licensees and grantees and associated, affiliated and subsidiary companies, and Twentieth and any subsequent assignee may freely assign the Agreement, in whole or in part, to any party; provided, however, that Twentieth shall remain secondarily liable thereunder unless said assignment is to an entity affiliated with, owned or controlled by or owning or controlling Twentieth, or which succeeds to substantially all of the assets of Twentieth, or to a major or so-called "mini-major" production or distribution company, or to a network, or to a financially responsible entity which assumes all of Twentieth's obligations hereunder. Twentieth shall have the right to lend Player's services

hereunder to any subsidiary or affiliated entities, or any motion picture production entity, provided such production entity shall have granted to Twentieth the right to distribute the Series. No such lending of Player's services shall relieve Twentieth of its obligations hereunder.

Insurance: Lender and Player shall be insured by Twentieth's errors and omissions and general liability insurance policies for the Pilot and Series to the extent that Twentieth obtains and maintains such policies, subject to the terms, conditions and restrictions of such policies and endorsements thereto.

Consents Exclusions: Twentieth agrees not to use Player's name, voice or likeness in connection with the merchandising of, or commercial tie-ins to, gambling, religious or political advertising, alcohol, tobacco, drugs, or firearms, undergarments or feminine or personal hygiene products.

Guild/Pension, Health & Welfare: Twentieth shall make all required guild pension, health and welfare contributions directly to the applicable guild. There shall be no crediting of "overscale" compensation against residuals and vice-versa.

Indemnification:

- a. **By Lender and Player:** Each of Lender and Player agrees to indemnify and hold harmless Twentieth, its subsidiaries, affiliates, parents and its and their successors, assigns, licensees, officers, directors and employees, from and against any and all third party claims, liabilities, losses, damages, costs, expenses (including reasonable outside attorneys' fees), judgments and penalties arising out of, resulting from, based upon or incurred because of (i) the breach by Lender and/or Player of any agreement or warranty made by Lender and/or Player hereunder and (ii) any gross negligence, intentionally tortious or reckless acts or omissions committed by Lender and/or Player while providing Pilot or Series services (except for negligence, excluding gross negligence as set forth above, or as otherwise required by law or matters set forth in subparagraphs b. (i) and b.(ii) below).
- b. **By Twentieth:** Twentieth agrees to indemnify, defend and hold harmless Lender and Player from and against any and all third party claims, liability, losses, damages, costs, expenses (including reasonable outside attorneys' fees), judgments and penalties arising out of, resulting from, based upon or incurred because of: (i) the addition, subtraction or alteration by Twentieth of any results and proceeds of Lender's and/or Player's services; (ii) materials specifically furnished by Twentieth for use by Lender and/or Player hereunder; and (iii) the development, production, distribution, and/or exploitation of the Series and/or elements thereof, except to the extent not covered by Lender's and/or Player's indemnification of Twentieth (as set forth in subparagraph (a) above).

Work Visa(s)/Permit(s): Player's services and Twentieth's obligations hereunder shall be subject to Twentieth obtaining all appropriate work visa(s), work permit(s) and union

permissions requested by law for Player deemed necessary by Twentieth. Player will provide Twentieth with all required information and cooperate fully with Twentieth's efforts to obtain said work visa(s), work permit(s) and union permissions.

SOUNDBRACK ALBUM AGREEMENT
As of March 3, 2005

Twentieth Century Fox Television ("Twentieth") shall own the phonorecord masters relating to the Pilot and Series referred to in that certain Agreement (the "Agreement") dated as of March 2, 2005 between Bertha Blue, Inc. ("Lender") f/s/o David Boreanaz ("Player") and Twentieth. Twentieth shall have the right to rerecord and/or re-use Player's voice and performances for use in Soundtrack Records. The royalty to be paid to Lender in connection with the issuance of a Soundtrack Record using Player's voice shall be [REDACTED] of the suggested retail list price of such Soundtrack Record, calculated, computed and paid in all respects in accordance with the Agreement between Twentieth and the record company distributing such Soundtrack Record. The royalty shall be reduced (pro rata) by the number of royalty bearing masters contained on the Soundtrack Record and if one or more additional artist/record producers are entitled to a royalty in connection with the exploitation of a master recording in which Player's voice is embodied, then the royalty shall be further reduced (pro rata) by the total number of such artists/record producers on such master. Neither Lender nor Player shall be entitled to any other compensation in connection with such use.

AGREED:



David Boreanaz ("Player")

Redacted

Player's Social Security Number



BERTHA BLUE, INC. ("Lender")

By: _____

Title: _____

Redacted

Federal I.D. Number

TWENTIETH CENTURY FOX TELEVISION,
a unit of **TWENTIETH CENTURY FOX FILM CORP.**
P.O. Box 900, Beverly Hills, CA 90213
Attn: Legal Department; Fax 310.369.1872

By: 

Samuel E. Bramhall

Its: SVP, Business Affairs

Player's Agent and Address:

Michael Katcher

Creative Artists Agency LLC

9830 Wilshire Boulevard

Beverly Hills, CA 90212

(310) 288-4545
(Phone)

(310) 288-9512
(Fax)

cc:
Eric Suddleson
Nelson Felker Toczek & Davis
10880 Wilshire Boulevard, Suite 2070
Los Angeles, CA 90024

Exhibit 4

AGREEMENT FOR SERIES SERVICES WITH OPTIONS

PLAYER: DAVID BOREANAZ LENDER (If Loan-Out): BERTHA BLUE, INC. DATE: AS OF AUGUST 13, 2008
MINOR: NO U.S. CITIZEN: YES
ROLE: "AGENT BOOTH" TITLE: "BONES" LENGTH: 1 HOUR

I. TERMINATION AND NOVATION OF PRIOR AGREEMENT

Reference is hereby made to the Agreement for Pilot With Series Options dated March 2, 2005 (if and as subsequently revised and amended), together with the Rider and Standard Terms thereto (Exhibit "A") (collectively the "Prior Agreement") with respect to Player's Series services. The Prior Agreement is terminated as of August 13, 2008 as to Twentieth, Lender and Player's respective rights and obligations for the Fourth and subsequent Contract Years (as set forth therein). It is intended by Twentieth, Lender and Player that upon signature hereof this Agreement shall constitute a novation of the Prior Agreement with respect to Player's services for the First (2008-09) and (if applicable) the Second (2009-10), Third (2010-11), Fourth (2011-12) and Fifth (2012-13) Contract Years for the Series as set forth below. Notwithstanding the foregoing, the Soundtrack Album Agreement between the parties dated as of March 3, 2005 shall remain in full force and effect and is not terminated.


II. PLAYER'S SERVICES IN SERIES ("Series"):

SERIES OPTIONS: Fox hereby engages Player, on a pay-or-play basis, to render services in the First Contract Year in accordance with the guarantee/episodic compensation provision set forth below. Player grants Fox exclusive, irrevocable, consecutive, dependent options to require Player to render services in each Contract Year of the Series. Series Options for subsequent years are for the Ratio of all episodes produced in each applicable year.

OPTION EXERCISE FOR CONTRACT YEARS: June 30 of the applicable year.

GUARANTEE/EPISODIC COMPENSATION: In consideration of all rights granted and services rendered by Player hereunder in connection with the Series (including one run only of each Series episode except with respect to foreign telecasts as set forth below), Player shall be paid the Episodic Compensation set forth hereinbelow. In the First Contract Year, Player guaranteed, pay or play, the following Ratio of episodes produced during the First Contract Year, but no less than the Minimum Number; provided, however, that if Fox does not exercise its option for additional episodes, said guarantee instead shall be the Ratio of episodes produced pursuant to the initial order, but no less than the Minimum Number. In subsequent Contract Years for which an option is exercised, Player guaranteed, pay-or-play, the following Ratio of episodes produced, but no less than the Minimum Number. In the First Contract Year, Fox may treat the Pilot as 1 episode. If Fox makes multi-segment episodes, each full segment will constitute 1 episode for purposes of Guarantee, and Episodic Compensation for 1 episode will be payable for each such segment.




Contract Year	Minimum Number	Ratio	Episodic Compensation*
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First:	13	ASP	
Second:	13	ASP	
Third:	13	ASP	
Fourth:	13	ASP	
Fifth:	13	ASP	






*Fox shall have the right at its sole election at any time and from time to time to increase the Episodic Compensation.

"ASP" = All Shows Produced



Except as otherwise specifically set forth herein, licensee cancellation of Series (or reductions of the licensee order) shall not relieve Fox of the obligation to pay episodic compensation for the Minimum Number of episodes indicated for any Contract Year for which Fox exercises its option.

Seasons 4-5 pickup bonus: Fox will pay Lender f/s/o Artist the total sum of  payable one-half  upon full signature of this Agreement by Lender and Artist and the other half  upon Fox's acceptance of a written network order for the production of new, original episodes of the Series for the 2009-2010 broadcast season.

III. TERMS AND CONDITIONS

RESIDUALS: ****To the extent permitted by SAG, the additional  payment is not Episodic Compensation, but is a prepayment of foreign residuals for the Pilot and each episode of the Series. Fox shall have the right at its sole election at any time and from time to time to pay the additional  payment as Episodic Compensation in which case such payment will not be treated as a prepayment of foreign residuals. The "Total Compensation" is defined as the Episodic Compensation plus, if applicable, the  prepayment of foreign residuals and shall be quoted as  Foreign TV-SAG Minimum; U.S. & Canada-SAG Minimum; Theatrical Use- Supplemental Markets-SAG Minimum.

SCREEN CREDIT: On each Series episode in which Player recognizably appears, Player shall be accorded credit in the main/opening titles; on a separate card; grouped among the cards accorded to other Series regular actors; in (at Fox's election) first position among Series regular actors or in a "Laverne & Shirley" format (e.g., two names on one card, but not stacked, in first position) for the credits of Player and the actor playing "Brennan"; in a type, size, boldness and duration (except as set forth in the previous clause) no less favorable than the credit accorded any other Series regular actor. All other aspects of such credit are at Twentieth's discretion.

RIGHTS AND SERVICES: Fox owns all rights in Player's services, name, likeness and voice in connection with the Role, Pilot, Series and each episode and Player grants Fox as a "work made for hire" all such rights in all material furnished, suggested or performed by Player or material owned or controlled by Player and incorporated or used in the Pilot or Series, to use and exploit in all media now known or hereafter devised, throughout the universe, in perpetuity. If Episodic Compensation exceeds the amounts set forth in SAG TV 14.(b), Episodic Compensation includes buy out of overall production and work time for full production season. To the extent permitted by SAG, the compensation payable in connection with the Pilot and each episode of the Series shall be deemed a prepayment of overtime and premium days. Player consents to the use of Player's name, voice, likeness (actual or simulated, in character or otherwise related to Player's services hereunder only) and biography in merchandising. For merchandise that includes Player, Fox shall pay Player  of Merchandising Net Receipts reducible by amounts payable to other Series regular actors in connection with merchandising to a floor of  of Merchandising Net Receipts if Fox is obligated to make payments to another person in connection with the same merchandising item.

EXCLUSIVITY: Maximum required by the applicable Licensee as permitted by SAG. Player warrants that Player has no outstanding commitments which will materially interfere with the complete performance of all of Player's obligations nor shall Player enter into any commitment which materially

conflicts or interferes with Player's obligations to Fox (which shall at all times be in first position) or with any rights granted to Fox pursuant to this Agreement. Player shall give Fox reasonable advance notice of any and all legal obligations of Player mandated by federal, state or local authority (e.g., jury duty) which might interfere with Player's services hereunder. In the event of any such obligation, Player shall cooperate fully with Fox in taking such action as Fox deems necessary to reschedule the obligation. Player's services shall be exclusive in television and series programming, subject to the following: Provided Player is not in material default and subject to Licensee approval with respect to Player's services in connection with U.S. commercials, Player may render unlimited non-identifiable voice over services, make U.S. (subject to Twentieth obtaining Licensee approval, which Twentieth shall use good faith efforts to obtain but its failure to obtain same shall not be a breach of this Agreement) and non-U.S. telecast commercials (including, without limitation, infomercials), make radio, talk, game, news, panel and award show guest (non-host, non-recurring) appearances and up to 3 other television guest appearances (including MOVs and mini-series if not longer than 4 telecast hours in the aggregate) during each 13-week period; provided any of such permitted services or appearances are not in the Role or as a character substantially similar to the Role, are not in a role which is a continuing role, are not during production periods, are not on programs known at the time such engagement is accepted by Player to be scheduled to be telecast during the premiere week of the Series, at any time prior to November 15th in any Series Contract Year, during so called "sweeps" periods or during the regularly scheduled first run telecast time period of the Pilot or Series, and, are not on a program which, to the best of Player's knowledge, has as any sponsor, a sponsor whose products are a competitor with any product of a major sponsor of the Series (Player shall use reasonable efforts to obtain such program telecast information and inform Fox in a timely manner).

PUBLICITY & RELATED SERVICES: Player will: (1) render services in connection with standard openings, closings, lead-ins, lead-outs, Pilot, Series and episodic trailers, behind-scene shots, on-set interviews, Promotional Films, and other enhanced or added value material and promotional footage (collectively, "Promotional Footage") for no additional compensation; (2) make not less than, as Fox may request, five promotional and institutional non-performing Series-related appearances per each Contract Year for non-paying audiences (including, at Fox's election and without limitation, the Television Critics Association Press Tour in July and January (the "TCAS") and the May up-front presentations in New York (the "Up-Fronts") and international screenings in L.A.) for no additional compensation; and (3) do the Licensee's still photo gallery shoot, the Licensee's "on-air" image campaign, the Licensee's satellite press tour and such other publicity and related services as Fox or the Licensee may reasonably require in connection with the Pilot and/or Series for no additional compensation. Except with respect to Player's services (if and as required) for the TCAS, the Up-fronts, and in the month preceding the Series season premieres, Player's services under subparagraphs (1), (2) and (3) above shall be subject to Player's professional availability outside of production periods. If Player is required to travel in connection with the foregoing services, Fox will provide/reimburse such first class travel, accommodations, and expenses as required by SAG.

CONSENTS: Player consents to the use of Player's name, voice, likeness (actual or simulated, in character or otherwise related to Player's services hereunder only) and biography, with no additional compensation to Player, in any and all media now known or hereafter developed, throughout the universe and in perpetuity, in connection with (1) the exploitation of the Pilot/Series or elements thereof; (2) any ancillary and subsidiary uses of the Pilot/Series or elements thereof; (3) the advertising, promotion and marketing of the Pilot/Series or elements thereof; (4) the "institutional" advertising of Fox, its affiliated companies and its licensees; (5) the advertising of products or services of Fox's and its Licensee's commercial sponsors (including, without limitation, commercial tie-ins, product placement and point-of-purchase campaigns), provided that such advertising occurs in conjunction with the publicizing, promotion, production or distribution of the Pilot/Series or elements thereof and does not constitute a direct endorsement of such product or service; (6) computer, Internet, CD Rom, DVD, BD-ROM, Blu-ray and other high definition formats, replay, games, interactive, wireless applications, and other "new media" exploitation, and e-commerce related to the Pilot/Series or elements thereof; (7) literary and music publishing related to the Pilot/Series and elements thereof; and (8) sound recordings and jacket covers (whether or not Player's performance is contained therein) related to the Pilot/Series or elements thereof. Should Fox require Player's additional services beyond those required hereunder, Fox and Player will negotiate in good faith with respect to Player's compensation for such additional services as, when and to the extent required by SAG. For purposes of this Paragraph, "or elements thereof" shall include, without limitation, the use of Promotional Footage.

LAW: Player agrees that the state and federal courts in Los Angeles County, California will have personal jurisdiction over Player, and will be the exclusive forum for any lawsuits arising out of this Agreement, and that California law (as governs contracts entered into and fully performed in California) will apply. If any provisions hereof are contrary to law, they will be modified to conform. Player will abide by "anti-payola" requirements.

PRODUCER'S REMEDIES: Fox will have all rights available at law, equity and under SAG for Player's incapacity, default, material breach or if Fox's normal production operations are materially hampered or otherwise materially interfered with by reason of any disruptive events (including, but not limited to, a labor dispute). In such event, the Minimum Number for the applicable Contract Year may be reduced at Fox's sole election by 1 for each episode for which production is not commenced or completed due to said event to not less than 7. Player acknowledges that the services and the rights herein granted are of a special, unique, unusual, extraordinary and intellectual character giving them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages, and that Player's default or material breach will cause Fox irreparable injury and damage. If Fox in its discretion believes that Player may fail or refuse to perform hereunder, Fox may require written assurance of Player's intent to perform the requested services. If Fox does not receive such assurance within 24 hours (or less, if production exigencies exist), then Player is in default and Fox reserves its rights and remedies pursuant to this agreement, at law and in equity. Player agrees that Fox shall be entitled to seek injunctive and other equitable relief if Player commits or threatens to commit a default or otherwise threatens to materially breach this Agreement. Fox may at any time, without legal justification or excuse, elect not to use Player's services or to have any further obligations to Player except any continuing obligations to pay residuals required by SAG, to accord Player credit on the Pilot and each Series episode in which Player recognizably appears, and to pay Player the Episodic Compensation with respect to the applicable employment period or Contract Year for which Fox has exercised its option. On a non-precedential, non-citeable basis, if Fox elects not to use Player's services as set forth in the preceding sentence, then any compensation earned by Player in the television industry during the period that Fox could have required Player to render services (e.g., periods for which Fox engaged Player or exercised an option hereunder) under this Agreement shall reduce Fox's obligation to pay Player compensation hereunder, and Player shall immediately notify Fox in writing of any such compensation earned by Player in the television industry.

SPECIAL PROVISIONS: This agreement shall be governed by the SAG collective bargaining agreement. This Agreement shall be effective for all purposes as a binding agreement. Player warrants and represents that Player is and shall during the term of this Agreement continue to be a member in good standing of all applicable collective bargaining units having jurisdiction over Player's services under this Agreement. Player's services hereunder shall be: (i) if the Licensee is ABC, CBS, FBC, NBC, the WB, UPN or a major cable network (e.g., FX, TNT), pursuant to Licensee's customary requirements for Series regular actors, subject to the SAG Agreement; (ii) conducted at all times by Player in a professional manner; and (iii) performed consistent with Fox's reasonable directions, practices and policies that reasonably relate to the services being provided (except as to creative matters, to which the "reasonable" restriction shall not apply). Incorporated in this Agreement by reference are Fox's Standard Terms (including the definition of "Merchandising Net Receipts") which shall be subject only to such changes thereto as may be mutually agreed upon in writing following good faith negotiation within Fox's customary parameters for persons of Player's stature within the television industry as of the date of this agreement. All of Fox's obligations are expressly conditioned upon Player's completion to Fox's satisfaction of Employment Eligibility Verification Form I-9.

NOTICES: All written notices from Fox to Player may be given by mail (effective upon mailing), by messenger, overnight delivery or fax and/or e-mail transmission and shall be sent to the address and/or e-mail address and/or fax number (as applicable) set forth below. Fax, e-mail, overnight or messengered delivery will be effective on the calendar date sent. Any notice date which is a non-business day (i.e., Saturday, Sunday or industry holiday), or any notice period which expires on a non-business day, shall be automatically extended to the next business day.

This Agreement (including the Rider attached hereto and incorporated herein by this reference) constitutes the entire understanding between the parties concerning the subject matter hereof and shall not be modified or amended except by the written agreement of the parties. In the event of a conflict between this Principal Agreement and the Rider, the Rider shall control.

HERE
SIGN
AGREED

David Boreanaz ("Player")

Player's Social Security Number

BERTHA BLUE, INC ("Lender")

By:

Title:

Federal I.D. Number

TWENTIETH CENTURY FOX TELEVISION,
a unit of TWENTIETH CENTURY FOX FILM CORP.
P.O. Box 900, Beverly Hills, CA 90213
Attn: Legal Department; Fax 310.369.1872

By:

Samuel E. Bramhall

Its: SVP, Business Affairs

Player's Agent and Address:

Michael Katcher

Creative Artists Agency LLC

2000 Avenue of the Stars

Los Angeles, CA 90067

(424) 288-2000

(Phone)

(424) 288-2900

(Fax)

e-mail: mkatcher@caa.com

cc: Patti Felker / Bruce Gellman
Felker Toczek Gellman Suddleson LLP
10880 Wilshire Boulevard, Suite 2070
Los Angeles, CA 90024
Phone: (310) 441-8000; Fax: (310) 441-8010;
e-mail: bruce@ftgslaw.com

**RIDER TO THE AGREEMENT FOR SERIES SERVICES WITH OPTIONS DATED AS OF
AUGUST 13, 2008 BETWEEN TWENTIETH CENTURY FOX TELEVISION AND BERTHA
BLUE, INC. f/s/o DAVID BOREANAZ**

Producer Credit: Subject to network/licensee approval and subject to Twentieth exercising the applicable option, for each Series episode produced and broadcast for which Player has completed all material services commencing with the first original episode for which final credits are submitted following full signature of this Agreement by Lender and Artist, Twentieth shall accord Player "Producer" credit on a separate card, in the main, opening or end titles wherever other producer credits appear (excluding the credits to any showrunners or Barry Josephson), in the same size, style and duration as other producer credits accorded in connection with the Series, excluding the credits to any showrunners and/or Barry Josephson. Except as expressly stated above, all characteristics of Player's credit will be determined by Twentieth. Any failure to accord Player credit will not be considered a breach of this Agreement and will not entitle Player to terminate this Agreement or seek injunctive relief. Upon written notice from Player, Twentieth will make reasonable efforts to correct future copies of the applicable episode for any credit error that may occur. Notwithstanding the foregoing, Artist's Co-Producer credit for episodes titled prior to Lender's and Artist's full signature of this Agreement shall remain unaffected and subject to the terms and conditions of the Prior Agreement, provided that Artist shall receive only one such credit (Co-Producer or Producer) on any single episode of the Series.

Contingent Compensation: The Paragraph entitled "Contingent Compensation" set forth in the Prior Agreement shall remain in full force and effect notwithstanding the termination of the Prior Agreement, subject to Lender's and Artist's complete performance of all of the material terms and conditions of this Agreement as well as the Prior Agreement.

Dressing Room: While Player is rendering services hereunder, Twentieth shall provide Player with a private, first class dressing room (exclusive during periods of production), which shall be no less than a star wagon and which shall include customary first class amenities and, provided a hard line exists, a phone (Player to pay all non-Series related long-distance and toll charges - no cell phones), as are available at the particular production facility/site. Such dressing room shall be no less favorable than the dressing rooms provided to other Series regulars.

Domestic Photo/Likeness/Biography Approval: With respect to Twentieth's use of Player's likeness and biography (and Twentieth's provision of Twentieth-generated materials to the network licensee) in connection with the publicity and promotion of the Pilot/Series and/or elements thereof, Player shall have the following rights of approval, such approval not to be unreasonably or untimely withheld:

- a. **Still Photographs:** Still photography taken and distributed by Twentieth in which Player's likeness appears, provided that Player must approve: (i) 50% of all still photographs from each Pilot and Series episode submitted to Player in reasonable quantities in which Player appears alone; or (ii) 75% of all still photographs from each Pilot and Series episode submitted to Player in reasonable quantities in which Player appears with others. Still photographs taken directly from copies of the Pilot or episode of the Series delivered to the Licensee of the Series are hereby pre-approved.
- b. **Non-Photographic Likeness:** All non-photographic likenesses provided that Player provides Twentieth specific written objections in writing. If disapproved non-photographic likenesses are redrawn to meet Player's specific written objections, Player

shall have a right of reasonable approval with respect to such redrawn non-photographic likenesses. If, after 1 redrawn non-photographic likeness, Player has not approved such likeness, Player may elect to have the non-photographic likeness redrawn, at Player's own expense, by an artist approved by Twentieth; provided that such redrawing can be completed within the time guidelines reasonably specified by Twentieth. If Player elects not to have the non-photographic likeness redrawn, Twentieth will select one of the existing likenesses.

- c. **Biographical Data:** Player's biographical data released by Twentieth, provided that Player gives Twentieth specific written objections to any disapproved biographical data.
- d. **Domestic Application Only:** All of the foregoing shall apply only to still photographs, non-photographic likenesses, and biographical data of Player that are intended for use in connection with the U.S. telecast or distribution of the Pilot and/or Series.
- e. **Time Limitations:** Player must approve the applicable percentage of each group of still photographs, each non-photographic likeness, and all biographical data within 3 business days of Twentieth's submission to Player or 2 business days with respect to material in which Player's still photograph, non-photographic likeness, or biographical data appears with others. Failure to disapprove any of the foregoing within such time period (or shorter period in the case of publication and/or media deadlines) will be deemed approval of the submitted material.

Paid Ads: Subject to Twentieth's customary "Excluded Ads" (e.g., awards, nomination, congratulatory ads and the like in which only the honoree is mentioned, group ads, teasers, etc.), Twentieth shall accord Player credit in all paid ads issued by Twentieth or under its control in connection with the Series in which any other Series regular actor is accorded credit (other than a marquee value star); if any Series regular actor, other than a marquee value star and other than the nominee, award recipient, or subject of the congratulatory ad, is included in the Excluded Ad, Player also shall be accorded credit in such Excluded Ad. If Twentieth fails to comply with any paid ad provision of the Agreement, Twentieth agrees, upon written notice from Player which specifies such failure to comply, to take such steps as are reasonably practicable to cure such failure with respect to future paid ads.

Hair/Make-up/Wardrobe: Subject to applicable union guidelines and budgetary limitations, while Player is rendering Pilot and Series services hereunder, Twentieth shall consult with Player regarding Player's hair, make-up, and wardrobe.

Series Payment: Excluding the First Contract Year, if Twentieth exercises its option for Player's Series services for a Contract Year, Twentieth shall commence Lender's episodic payments no later than September 1 of the applicable year (excepting only the Second Contract Year if Twentieth has exercised its extension option, in which event payments shall start no later than October 1), regardless of whether actual production of the Series has begun, subject to Twentieth's rights under the Agreement in the event of Lender's or Player's incapacity or default, or production interruption due to labor disputes and/or causes beyond Twentieth's control.

Worker's Compensation: Player's services hereunder shall be subject to all applicable workers' compensation statutes of the United States.

Videocassette: Upon Player's request following telecast of the Pilot, Twentieth shall provide Player with a ½ inch videocassette or DVD (at Twentieth's sole election) copy of any Pilot hereunder in which Player recognizably appears for Player's personal, non-commercial use.

Assignment and Lending: The Agreement is non-assignable by Lender or Player except to an entity owned and controlled by Player and which has the exclusive right to furnish Player's services provided for in the Agreement, provided, however, that such assignment must be made prior to commencement of services for the First or subsequent applicable Contract Years, and shall be effective with respect to the then upcoming and subsequent Contract Years. The Agreement shall inure to the benefit of Twentieth's successors, assignees, licensees and grantees and associated, affiliated and subsidiary companies, and Twentieth and any subsequent assignee may freely assign the Agreement, in whole or in part, to any party; provided, however, that Twentieth shall remain secondarily liable thereunder unless said assignment is to an entity affiliated with, owned or controlled by or owning or controlling Twentieth, or which succeeds to substantially all of the assets of Twentieth, or to a major or so-called "mini-major" production or distribution company, or to a network, or to a financially responsible entity which assumes all of Twentieth's obligations hereunder. Twentieth shall have the right to lend Player's services hereunder to any subsidiary or affiliated entities, or any motion picture production entity, provided such production entity shall have granted to Twentieth the right to distribute the Series. No such lending of Player's services shall relieve Twentieth of its obligations hereunder.

Insurance: Lender and Player shall be insured by Twentieth's errors and omissions and general liability insurance policies for the Pilot and Series to the extent that Twentieth obtains and maintains such policies, subject to the terms, conditions and restrictions of such policies and endorsements thereto.

Consents Exclusions: Twentieth agrees not to use Player's name, voice or likeness in connection with the merchandising of, or commercial tie-ins to, gambling, religious or political advertising, alcohol, tobacco, drugs, or firearms, undergarments or feminine or personal hygiene products.

Guild/Pension, Health & Welfare: Twentieth shall make all required guild pension, health and welfare contributions directly to the applicable guild. There shall be no crediting of "overscale" compensation against residuals and vice-versa.

Indemnification:

- a. **By Lender and Player:** Each of Lender and Player agrees to indemnify and hold harmless Twentieth, its subsidiaries, affiliates, parents and its and their successors, assigns, licensees, officers, directors and employees, from and against any and all third party claims, liabilities, losses, damages, costs, expenses (including reasonable outside attorneys' fees), judgments and penalties arising out of, resulting from, based upon or incurred because of (i) the breach by Lender and/or Player of any agreement or warranty made by Lender and/or Player hereunder and (ii) any gross negligence, intentionally tortious or reckless acts or omissions committed by Lender and/or Player while providing Pilot or Series services (except for negligence, excluding gross negligence as set forth above, or as otherwise required by law or matters set forth in subparagraphs b. (i) and b.(ii) below).
- b. **By Twentieth:** Twentieth agrees to indemnify, defend and hold harmless Lender and Player from and against any and all third party claims, liability, losses, damages, costs, expenses (including reasonable outside attorneys' fees), judgments and penalties arising

out of, resulting from, based upon or incurred because of: (i) the addition, subtraction or alteration by Twentieth of any results and proceeds of Lender's and/or Player's services; (ii) materials specifically furnished by Twentieth for use by Lender and/or Player hereunder; and (iii) the development, production, distribution, and/or exploitation of the Series and/or elements thereof, except to the extent not covered by Lender's and/or Player's indemnification of Twentieth (as set forth in subparagraph (a) above).

Work Visa(s)/Permit(s): Player's services and Twentieth's obligations hereunder shall be subject to Twentieth obtaining all appropriate work visa(s), work permit(s) and union permissions requested by law for Player deemed necessary by Twentieth. Player will provide Twentieth with all required information and cooperate fully with Twentieth's efforts to obtain said work visa(s), work permit(s) and union permissions.

Exhibit 5

AGREEMENT FOR SERIES SERVICES WITH OPTIONS

PLAYER: DAVID BOREANAZ **LENDER (If Loan-Out):** BERTHA BLUE, INC. **DATE:** AS OF December 24, 2012

MINOR: NO **ELIGIBLE TO WORK IN THE US:** YES

ROLE: "AGENT BOOTH" **TITLE:** "BONES" **LENGTH:** 1 HOUR

I. TERMINATION OF PRIOR AGREEMENT

Reference is hereby made to the Agreement for Series Services with Options dated as of August 13, 2008 (if and as subsequently revised and amended), together with the Rider and Standard Terms thereto (Exhibit "A") (collectively the "Prior Agreement") with respect to Player's Series services. The Prior Agreement was terminated as of December 21, 2012 as to Fox, Lender and Player's respective rights and obligations for the Fifth and subsequent Contract Years (e.g., the Eighth and subsequent Series broadcast years, as set forth therein, provided that any payments made under the Prior Agreement in connection with the Eighth Series broadcast year are creditable against payments due hereunder); Fox's ownership of the Series (including the Pilot) and the results and proceeds of Player's services thereunder (including ancillary rights thereto as set forth in the Prior Agreement), as well as the provisions of the Prior Agreement regarding insurance, indemnification, payment of residuals and credit, survive such termination. Lender and Player represent and warrant that neither has entered into any obligation or undertaking since the termination of the Prior Agreement, including any obligation or undertaking that would interfere or conflict with any of the terms and conditions of this Agreement. It is intended by Fox, Lender and Player that upon signature hereof this Agreement shall define the respective rights and obligations of the parties hereto with respect to Player's services for the First (2012-13) and (if applicable) the Second (2013-14) and Third (2014-15) Contract Years for the Series as set forth below.

II. OPTIONS FOR PLAYER'S SERVICES IN SERIES ("Series"):

SERIES OPTIONS: Fox hereby engages Player, on a pay-or-play basis, to render services in the First and Second Contract Years in accordance with the guarantee/episodic compensation provision set forth below. Player grants Fox exclusive, irrevocable, consecutive, dependent options to require Player to render services in the Third Contract Year of the Series. Series Options for subsequent years are for the Ratio of all episodes produced in each applicable year.

OPTION EXERCISE FOR SUBSEQUENT CONTRACT YEARS: June 30 of the applicable year.

GUARANTEE/EPISODIC COMPENSATION: In consideration of all rights granted and services rendered by Player hereunder in connection with the Series (including one run only thereof except with respect to foreign telecasts as set forth below), Player shall be paid the Episodic Compensation set forth hereinbelow. In each Contract Year for which an option is exercised, Player is guaranteed, pay-or-play, the following Ratio of original episodes produced, but no less than the Minimum Number. If Fox produces multi-segment episodes, each original full segment will constitute 1 episode for purposes of Guarantee, and Episodic Compensation for 1 episode will be payable for each such segment.

Contract Year	Minimum Number	Ratio	Episodic Compensation*
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First:	22**	ASP	
Second:	22**	ASP	
Third:	22**	ASP	

*Fox shall have the right at its sole election at any time and from time to time to increase the Episodic Compensation (provided that Exclusivity shall not be increased).

** Subject to Player not being in default and the provisions hereof regarding Force Majeure and Fox Disability.

ASP* = All Original Episodes Produced. If Fox produces a clip/compilation episode that includes new, original material for which Player renders acting services, Player's fee for such episode will be negotiated in good faith taking into consideration the amount of such new material and the license fee received by Fox for the episode, but in no event greater than the fees set forth herein.

Except as otherwise specifically set forth herein, licensee cancellation of Series (or reductions of the licensee order) shall not relieve Fox of the obligation to pay episodic compensation for the Minimum Number of episodes indicated for any Contract Year for which Fox exercises its option.

III. TERMS AND CONDITIONS

RESIDUALS: ****To the extent permitted by SAG, the additional [REDACTED] payment is not Episodic Compensation, but is a prepayment of foreign residuals for the Pilot and each episode of the Series. Fox shall have the right at its sole election at any time and from time to time to pay the additional [REDACTED] payment as Episodic Compensation in which case such payment will not be treated as a prepayment of foreign residuals. The "Total Compensation" is defined as the Episodic Compensation plus, if applicable, the [REDACTED] prepayment of foreign residuals and shall be quoted as [REDACTED] Foreign TV-SAG Minimum; U.S. & Canada-SAG Minimum; Theatrical Use-Greater of [REDACTED] or SAG minimum; Supplemental Markets-SAG Minimum.

SCREEN CREDIT: On each Series episode in which Player recognizably appears, Player shall be accorded credit in the main/opening titles; on a separate card; grouped among the cards accorded to other Series regular actors; in (at Fox's election) first position among Series regular actors or in a "Laveme & Shirley" format (e.g., two names on one card, but not stacked, in first position) for the credits of Player and the actor playing "Brennan"; in a type, size, boldness and duration (except as set forth in the previous clause) no less favorable than the credit accorded any other Series regular actor. All other aspects of such credit are at Fox's discretion. Inadvertent or casual failure to accord credit as provided herein shall not be deemed to be a breach of this Agreement. Player shall not be entitled to seek injunctive relief for a failure to accord credit. Fox agrees, upon receipt of written notice from Player specifying any such failure, to promptly take such steps as are reasonably practicable to cure such failure on a prospective basis.

RIGHTS AND SERVICES: Fox owns all rights in Player's services, name, likeness and voice in connection with the Role, Series and each episode and Player grants Fox as a "work made for hire" all such rights in all material furnished, suggested or performed by Player or material owned or controlled by Player and incorporated or used in the Series, to use and exploit in all media now known or hereafter devised, throughout the universe, in perpetuity. If Episodic Compensation exceeds the amounts set forth in SAG TV 14.(b), Episodic Compensation includes buy out of overall production and work time for full production season. To the extent permitted by SAG, the compensation payable in connection with each episode of the Series shall be deemed a prepayment of overtime and premium days (there shall be no buyout of forced calls or meal penalties). Player consents to the use of Player's name, voice, approved (as set forth in the Rider) likeness (actual or simulated, in character only or in or from the Promotional Footage) and approved (as set forth in the Rider) biography in merchandising. For merchandise that includes Player, Fox shall pay Player [REDACTED] of Merchandising Net Receipts (the definition of which shall be subject to good faith negotiation within Fox's usual parameters for persons of Player's

stature in the television industry at the time of this Agreement) reducible, on a dollar-for-dollar basis, to [REDACTED] of Merchandising Net Receipts if Fox is obligated to make payments to other royalty-receiving Series regulars in connection with the same merchandising item.

EXCLUSIVITY: Maximum required by the applicable Licensee as permitted by SAG in television and series programming. Player warrants that Player has no outstanding commitments which will materially interfere with the complete performance of all of Player's obligations nor shall Player enter into any commitment which materially conflicts or interferes with Player's obligations to Fox (which shall at all times be in first position) or with any rights granted to Fox pursuant to this Agreement. Player shall give Fox reasonable advance notice of any and all legal obligations of Player mandated by federal, state or local authority (e.g., jury duty) which might interfere with Player's services hereunder. In the event of any such obligation, Player shall cooperate fully with Fox in taking such action as Fox deem necessary to reschedule the obligation. Player's services shall be exclusive in television and series programming, subject to the following: Provided Player is not in material default and subject to Licensee approval with respect to Player's services in connection with U.S. commercials (which Fox shall make reasonable, good-faith efforts to obtain), Player may render unlimited non-identifiable voice over services, make U.S. and non-U.S. telecast commercials (including, without limitation, infomercials), make radio, talk, game, news, panel and award show guest (non-host, non-recurring) appearances and up to 3 other series guest appearances (including MOVs and mini-series if not longer than 6 telecast hours in the aggregate) during each 13-week period; provided any of such permitted services or appearances are not in the Role or as a character substantially similar to the Role, are not in a role which is a continuing role, are not during production periods, are not on programs known at the time such engagement is accepted by Player to be telecast or otherwise exhibited during the premiere week of the Series, at any time prior to November 15th in any Series Contract Year, during so called "sweeps" periods or during the regularly scheduled first run telecast time period of the Series, and, are not on a program which, to the best of Player's knowledge, has as any sponsor, a sponsor whose products are a competitor with any product of a major sponsor of the Series (Player shall use reasonable efforts to obtain such program telecast information and inform Fox in a timely manner). "Major sponsor" (as used herein) shall be defined in accordance with the definition set forth in Fox's licensing agreement with the Licensee.

PUBLICITY & RELATED SERVICES: For each Contract Year for which Fox exercises or intends to exercise its Series option Player will: (1) render services in connection with standard openings, closings, lead-ins, lead-outs, Series and episodic trailers, behind-scene shots, on-set interviews promotional films, and other enhanced or added value material and promotional footage (collectively, "Promotional Footage") for no additional compensation, which services shall be subject to Player's professional availability outside production periods (with respect to behind the scenes shots, on-set interviews and the other promotional footage set forth above, Fox shall not use footage which shows Player in an embarrassing or derogatory light); (2) make not less than, as Fox may request, five promotional and institutional non-performing Series-related appearances per each Contract Year for non-paying audiences (including, at Fox's election and without limitation, the Television Critics Association Press Tour in July and January and the May up-front presentations in New York and international screenings in L.A.) for no additional compensation; (3) do the Licensee's still photo gallery shoot, the Licensee's "on-air" image campaign, the Licensee's satellite press tour and such other publicity and related services as Fox or the Licensee may require in connection with the Series for no additional compensation; and (4) make such other promotional appearances and participate in such other promotional efforts for the Series as Fox may reasonably require, it being understood and agreed that Player's participation in such efforts is a material provision of Player's engagement hereunder; Player may occasionally decline individual promotional appearances (except for those specifically set forth in (1), (2) and (3)) that conflict with Player's other obligations provided that Player renders a reasonable number of additional promotional appearances each Contract Year. Except with respect to Player's services (if and as required) for the TCAS, the Up-Fronts, and in the month preceding the Series season premieres, Player's services under subparagraphs (1), (2), (3) and (4) above shall be subject to Player's professional availability outside of production periods. If Player is required to travel in connection with the foregoing services, Fox will provide/reimburse such first-class travel, first-class accommodations, and expenses as required by SAG; provided that Fox shall use reasonable efforts to ensure that, on an "if available" and "if used" basis, Player's travel, accommodations and expenses in connection with an occurrence for which Player renders the foregoing services are substantially similar to the travel, accommodations and expenses provided by Fox to any other Series regular actor in connection with the same occurrence.

CONSENTS: Player consents to the use of Player's name, voice, likeness (actual or simulated, in character only or in or from the Promotional Footage, subject, with respect to publicity and promotional uses, to Player's approval rights as set forth in the Rider) and biography (subject, with respect to publicity and promotional uses, to Player's approval rights as set forth in the Rider), with no additional compensation to Player (unless otherwise specified herein or in the Soundtrack Album Agreement), in any and all media now known or hereafter developed, throughout the universe and in perpetuity, in connection with (1) the exploitation of the Series or elements thereof; (2) any ancillary and subsidiary uses of the Series or elements thereof; (3) the advertising, promotion and marketing of the Series or elements thereof; (4) the "institutional" advertising of Fox, its affiliated companies and its licensees; (5) the advertising of products or services of Fox's and its Licensee's commercial sponsors (including, without limitation, commercial tie-ins, product placement and point-of-purchase campaigns), provided that such advertising occurs in conjunction with the publicizing, promotion, production or distribution of the Series or elements thereof and does not constitute a direct endorsement of such product or service; (6) computer, Internet, CD Rom, DVD, BD-ROM, Blu-ray and other high definition formats, replay, games, interactive, wireless applications, and other "new media" exploitation, and e-commerce related to the Series or elements thereof; (7) literary and music publishing related to the Series and elements thereof; and (8) sound recordings and jacket covers (whether or not Player's performance is contained therein) related to the Series or elements thereof. Should Fox request Player's additional services beyond those required hereunder (including, without limitation, in connection with television commercial advertising), Fox and Player will negotiate in good faith with respect to Player's compensation for such additional services as, when and to the extent required by SAG. For purposes of this Paragraph, "or elements thereof" shall include, without limitation, the use of Promotional Footage.

LAW: Player agrees that the state and federal courts in Los Angeles County, California will have personal jurisdiction over Player, and will be the exclusive forum for any lawsuits arising out of this Agreement, and that California law (as governs contracts entered into and fully performed in California) will apply. If any provisions hereof are contrary to law, they will be modified to conform. Player will abide by "anti-payola" requirements.


PRODUCER'S REMEDIES: Fox will have all rights available at law, equity and under SAG for Player's incapacity, default, material breach or if Fox's normal production operations are materially hampered or otherwise materially interfered with by reason of any disruptive events (including, but not limited to, a labor dispute). In such event, the Minimum Number for the applicable Contract Year may be reduced at Fox's sole election by 1 for each episode for which production is not commenced or completed due to said event to not less than 7. Player acknowledges that the services and the rights herein granted are of a special, unique, unusual, extraordinary and intellectual character giving them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages, and that Player's default or material breach will cause Fox irreparable injury and damage. If Fox in its good faith discretion believes that Player may fail or refuse to perform hereunder, Fox may require written assurance of Player's intent to perform the requested services. If Fox does not receive such assurance within 24 hours (or less, if production exigencies exist), then Player is in default and Fox reserves its rights and remedies pursuant to this agreement, at law and in equity. Player agrees that Fox shall be entitled to seek injunctive and other equitable relief if Player commits or threatens to commit a default or otherwise threatens to materially breach this Agreement. Fox may at any time, without legal justification or excuse, elect not to use Player's services or to have any further obligations to Player except any continuing obligations by Fox to insure and indemnify Player as set forth hereinafter, to pay residuals required by SAG, to accord Player credit on each Series episode in which Player recognizably appears, and to pay Player the Episodic Compensation with respect to the applicable employment period or Contract Year for which Fox has exercised its option. If Fox elects not to use Player's services as set forth in the preceding sentence, then any compensation earned by Player in the television industry during the period that Fox could have required Player to render services under this Agreement shall reduce Fox's obligation to pay Player compensation hereunder, and Player shall immediately notify Fox in writing of any such compensation earned by Player in the television industry.

SPECIAL PROVISIONS: This agreement shall be governed by either the SAG or AFTRA collective bargaining agreement as determined by Fox in its sole discretion. In that regard, the parties acknowledge that Fox may elect to have the AFTRA Code be applicable in lieu of the SAG Agreement, in which case references herein to SAG shall refer to AFTRA. In connection therewith, Player recognizes that certain rights granted under the SAG Agreement must be specifically consented to under AFTRA and, accordingly, Player consents to exhibition of the Series in Supplemental Markets, use of excerpts containing Player's performances for minimum AFTRA program fees pursuant to Paragraphs 73.(d)(2), 73(d)(8) and 73(d)(10) of the Network TV Code, and crediting of Player's over-scale compensation against overtime, rest time, overall production and work time to the maximum extent permitted under Paragraph 56 of the Network TV Code or pursuant to AFTRA Exhibit "A" (as applicable); and Player further consents to the use of any Series excerpt containing Player's performance to the full extent permitted under the AFTRA Agreement, at the applicable minimum fee, if any, set forth therein for each such use. This Agreement shall be effective for all purposes as a binding agreement. Player warrants and represents that Player is and shall during the term of this Agreement continue to be a member in good standing of all applicable collective bargaining units having jurisdiction over Player's services under this Agreement. Player's services hereunder shall be pursuant to Licensee requirements, conducted at all times by Player in a professional manner, and performed consistent with Fox's reasonable (except as to creative matters as to which no "reasonable" qualifier shall apply) directions, practices and policies that reasonably relate to the services being provided. Personal photography of cast, crew or the sets (and the posting of any such photographs) is strictly prohibited without the prior written permission of Fox's publicity department. Incorporated in this Agreement by reference are Fox's Standard Terms (including the definition of "Merchandising Net Receipts") which shall be subject only to such changes thereto as may be mutually agreed upon in writing following good faith negotiation within Fox's usual parameters for persons of Player's stature within the television industry as of the date of this agreement. In the event of a conflict between the Agreement and attached Rider, on the one hand, and the Standard Terms, on the other hand, the Agreement and attached Rider will control. All of Fox's obligations are expressly conditioned upon Player's completion to Fox's satisfaction of Employment Eligibility Verification Form I-9.

NOTICES: All written notices from Fox to Player may be given by mail (effective upon mailing), by messenger, overnight delivery or fax and/or e-mail transmission and shall be sent to the address and/or e-mail address and/or fax number (as applicable) set forth below. Fax, e-mail, overnight or messengered delivery will be effective on the calendar date sent. Any notice date which is a non-business day (i.e., Saturday, Sunday or industry holiday), or any notice period which expires on a non-business day, shall be automatically extended to the next business day.


This Agreement (including the Rider attached hereto and incorporated herein by this reference) constitutes the entire understanding between the parties concerning the subject matter hereof and shall not be modified or amended except by the written agreement of the parties. In the event of a conflict between this Principal Agreement and the Rider, the Rider shall control.

AGREED:



David Boreanaz ("Player")

Bertha Blue, Inc. ("Lender")

By: 

Title: _____

**TWENTIETH CENTURY FOX TELEVISION,
a unit of TWENTIETH CENTURY FOX FILM CORP.
P.O. Box 900, Beverly Hills, CA 90213
Attn: Legal Department; Fax 310.389.1872**

By: 

Samuel Bramhall
Its: Senior Vice President, Business Affairs

Player's Agent and Address: _____

Michael Katcher _____

Creative Artists Agency LLC _____

2000 Avenue of the Stars _____

Los Angeles, CA 90067 _____

(424) 288-2000 (424) 288-2900
(Phone) (Fax)

e-mail: mkatcher@caa.com

cc: Patti Felker / Bruce Gellman
Felker Toczek Gellman Suddleson LLP
10880 Wilshire Boulevard, Suite 2070
Los Angeles, CA 90024
Phone: (310) 441-8000; Fax: (310) 441-8010;
e-mail: bruce@ftglaw.com

**RIDER TO THE AGREEMENT FOR SERIES SERVICES WITH OPTIONS
DATED AS OF DECEMBER 24, 2012
BETWEEN TWENTIETH CENTURY FOX TELEVISION AND
BERTHA BLUE, INC. f/s/o DAVID BOREANAZ**

Producer Credit: Subject to network/licensee approval (approval by FBC is hereby acknowledged) and subject to Fox exercising the applicable option, for each Series episode produced and broadcast for which Player has completed all material services commencing with the first original episode for which final credits are submitted following full signature of this Agreement by Lender and Artist, Fox shall accord Player "Producer" credit on a separate card, in the main, opening or end titles wherever other producer credits appear (excluding the credits to any showrunners or Barry Josephson), in the same size, style and duration as other producer credits accorded in connection with the Series, excluding the credits to any showrunners and/or Barry Josephson. Except as expressly stated above, all characteristics of Player's credit will be determined by Fox. Any failure to accord Player credit will not be considered a breach of this Agreement and will not entitle Player to terminate this Agreement or seek injunctive relief. Upon written notice from Player, Fox will make reasonable efforts to correct future copies of the applicable episode for any credit error that may occur.

Dressing Room: While Player is rendering series regular acting services for the Series hereunder, Fox shall provide Player with a private, first class dressing room, which, if not a stage dressing room, shall be no less than a star wagon (provided, if any episode of the Series is on location, Player's dressing room may be a honeywagon if and as production exigencies so require and provided that all of the Series regulars providing services at that particular location on that production day also are in honeywagons) and which shall include customary first class amenities such as TV, VCR, sofa, bathroom, heat/air conditioner, microwave, and, provided a hard line exists, a phone (Player to pay all long-distance and toll charges - no cell phones), as are available at the particular production facility/site. Such dressing room and amenities shall be no less favorable than the dressing rooms and amenities provided to all other Series regulars.

Parking: During production periods for which Player is engaged, Fox will provide Player with parking for one car, either by an assigned parking space on the Fox lot (or the primary production location, if the Series is moved from the Fox lot) in reasonable proximity to the stage or by providing someone to park Player's car for them.

Contingent Compensation:

MAGR: Instead of any MAGR granted under the Prior Agreement, with respect to the Series produced hereunder and subject to full signature and Lender's and Player's complete performance of all of the material terms and conditions of this Agreement, Lender shall be entitled to receive an amount equal to 1% of 100% of the MAGR derived from the Series (Fox acknowledges this amount is fully vested upon signature of this Agreement by Lender and Artist).

Second Contract Year: Subject to full signature of this Agreement and Lender's and Player's continuing complete performance of all of the material terms and conditions of this Agreement, Lender shall be entitled to receive an amount equal to an additional [REDACTED] of the MAGR derived from the Series, vesting on a pro rata basis based on the number of episodes produced for the Second Contract Year for which Player completes all material services. In the event a Participation Statement is issued to Lender during the Second Contract Year, such statement shall reflect Lender's vested MAGR for the applicable Statement Period.

Third Contract Year: Upon Fox's exercise of its option for Player's services for the Third Contract Year (Tenth Series season), and subject to Lender's and Player's continuing complete performance of all of the material terms and conditions of this Agreement, Lender shall be entitled to receive an amount equal to an additional [REDACTED] of the MAGR derived from the Series, vesting on a pro rata basis based on the number of episodes produced for the Third Contract Year for which Player completes all material services. In the event a Participation Statement is issued to Lender during the Third Contract Year, such statement shall reflect Lender's vested MAGR for the applicable Statement Period.

Definition: Lender's MAGR shall be computed, determined and paid pursuant to Fox's Television Definition of MAGR (with, on a **CONFIDENTIAL, NON-PRECEDENTIAL AND NON-CITEABLE BASIS** a [REDACTED] Television Distribution Fee and a [REDACTED] Fox Administrative Charge, applicable to the entirety of Lender's share of MAGR). The Television Distribution Fee will not be charged with respect to Gross Receipts derived from the initial network license or any extensions or renewals thereof. In the event that Fox enters into an agreement with a network for the renewal of a Series following the expiration of the initial network license ("Network Renewal") and such Network Renewal provides for the network to pay to Fox, prospectively, payments in excess of the pattern budget for such additional seasons of the Series ("Premium License Fee"), then Fox shall charge the Television Distribution Fee on the amount by which the Premium License Fee exceeds the pattern budget. The remainder of the MAGR definition shall be Fox's standard MAGR definition, subject only to those changes as may be mutually agreed upon in writing following good faith negotiation within Fox's customary parameters for persons of Player's stature as of the date of this agreement, but said definition shall include, among other things, the following:

Production Charges shall include all direct and directly allocable costs of production. Distribution Expenses shall include actual, direct or directly allocable costs.

Series will not be cross-collateralized except that a Series may be cross-collateralized with a Pilot(s) and/or Presentation(s) on which it is based.

The Fox Financing Charge shall be [REDACTED]. There shall be no Fox Administrative Charge charged on Fox Financing Charge or Fox Financing Charge on Fox Administrative Charge or Fox Financing Charge on Fox Financing Charge; provided, however, Fox Financing Charge shall be treated as a recoupable item.

Production Charges will not include any third-party contingent compensation (excluding only fixed amount bonuses and royalties), advances or deferrals payable out of or measured by MAGR, net proceeds or other contingent compensation definition or calculation.

"Back-end" agency commissions (i.e., percentages of contingent compensation or deferrals payable out of contingent compensation) will be deducted in the same manner as Distribution Expenses and will not otherwise reduce Lender's contingent compensation hereunder; and "front-end" agency commissions (i.e., percentages of license fee) will be deducted as items of Production Charges.

In the event a Fox affiliate distributes the Series, Fox will not charge a distribution fee in excess of the Fox Distribution Fees.

DISTRIBUTION CONTROLS:

General: Fox shall have complete, exclusive and unqualified discretion and control as to the time, manner, and terms of its distribution, exhibition and exploitation of each Series episode or aspects thereof, separately or in connection with other programs, in accordance with such policies, terms and conditions and through such parties as Fox in its business judgment may in good faith determine are consistent with business policy and proper or expedient and the decision of Fox in all such matters shall be binding and conclusive upon Lender and Player. Notwithstanding the foregoing, Fox shall accord good faith (meaningful) consultation to Player with respect to the initial domestic off-network sales plan, subject to the reasonable availability and reasonable response time of Player. Fox makes no express or implied warranty or representation as to the manner or extent of any distribution or exploitation of each Series episode nor the amount of money to be derived from the distribution, exhibition and exploitation of each Series episode, nor as to any maximum or minimum amount of such monies to be expended in connection therewith. Fox does not guarantee the performance by any Subdistributor, licensee or exhibitor, of any contract regarding the distribution and exploitation of each Series episode.

Dealings with Affiliates: Each of Lender and Player acknowledges that Fox is part of a diversified, multi-faceted, international company, whose affiliates include, or may in the future include, among others, exhibitors, television "platforms", networks, stations and programming services, video device distributors, record companies, internet companies, so called "E.Commerce companies", publishers (literary and electronic) and wholesale and retail outlets (individually or collectively, "Affiliated Company or Companies"). Each of Lender and Player further acknowledges that Fox has informed Lender and Player that Fox intends to make use of Affiliated Companies in connection with its distribution and exploitation of the Series episodes, as, when and where Fox deems it appropriate to do so. Each of Lender and Player expressly waives any right to object to such distribution and exploitation of any Series episode (or aspects thereof) or assert any claim that Fox should have offered the applicable

distribution/exploitation rights to unaffiliated third parties (in lieu of, or in addition to, offering the same to Affiliated Companies). In consideration thereof, Fox agrees that Fox's transactions with Affiliated Companies will be on monetary terms comparable to the terms on which the Affiliated Company enters into similar transactions with unrelated third party distributors for comparable programs. Each of Lender and Player agrees that Lender's and/or Player's sole remedy against Fox for any alleged failure by Fox to comply with the terms of this paragraph shall be actual damages, and each of Lender and Player hereby waives any right to seek or obtain preliminary or permanent equitable relief or punitive relief in connection with any such alleged failure.

Reference:

a. Any claims, disputes, disagreements or other matters in question arising out of or relating to Fox's distribution of the Series ("Claim") shall be submitted to a general, non-jury reference ("Referee") to hear and decide all matters relating to the Claim pursuant to California Code of Civil Procedure Sec. 638 ("638 Reference"). Without limiting the foregoing, if for any reason any cause of action asserted as part of a Claim, or the entire Claim, is not capable of being decided by means of a 638 Reference, then the parties agree to have that cause of action resolved by means of binding arbitration in Los Angeles County, California before a single, neutral arbitrator with experience handling entertainment industry matters who is a former or retired judge of any California State or Federal Court under the JAMS Comprehensive Arbitration Rules and Procedures, including Rules 16.1 and 16.2, and the parties further elect the JAMS Optional Arbitration Appeal Procedures with respect to any resulting arbitration judgment or award (collectively, the "JAMS Rules"). The parties agree that any issue or dispute involving the interpretation of this Agreement, or any issue or dispute as to whether a particular Claim is subject to this Reference provision, shall be determined by the Referee (or Arbitrator) selected as provided for below. For avoidance of doubt, the parties note their intent that any cause of action or dispute requiring interpretation of this Agreement, regardless of whether based on State or Federal law, and any proceedings on remand or following a reversal or grant of a new trial, shall be considered a Claim subject to these Reference provisions. The parties further agree that the Referee (or Arbitrator) shall follow the California Rules of Evidence except as otherwise provided herein, and the Reference Trial (or Arbitration) and any depositions shall be transcribed, with the transcription costs borne equally by each side. The Referee (or Arbitrator) shall provide a written decision, which shall include a written statement of reasoning for the decision. In connection with any proceeding under this provision, the parties agree to take reasonable efforts, consistent with all applicable laws, rules and regulations, to preserve the confidentiality of information, documents, testimony and proceedings that relate to a Claim.

b. In the event a party refuses to participate in a 638 Reference (or Arbitration) as provided for herein, the party seeking to enforce the 638 Reference (or Arbitration) may do so by filing an action to enforce this dispute resolution provision. If any lawsuit is filed asserting a Claim, the parties intend and agree that the State or Federal Court where that action is filed shall be authorized to enforce this dispute resolution provision, and a party seeking to enforce this provision may file a motion for enforcement in lieu of a responsive pleading. Where the matters falling within this provision involve federal law issues that otherwise could only be heard in federal court, the motion to enforce the reference shall be brought in federal court.

c. The Referee's (or Arbitrator's) fees and expenses shall be paid by the losing party, but each party shall bear its own attorneys' fees and related costs except as otherwise provided for by law. The Referee shall be selected by mutual agreement between the parties, but if the parties cannot agree upon a Referee within 5 business days of a written request therefore, then within 10 business days of the written request, each side shall exchange its own list of four retired Judges of the California state or federal courts whom it wishes to nominate as potential Referees and shall rank the potential Referees by number in order of preference (in descending order, assigning "1" to the lowest choice). If any name appears on both lists, that Judge shall act as Referee. If there is more than one match, the Judge with the highest combined ranking shall serve as Referee. If there are no matches, then each side has the option to veto one name from the other side's list, and shall rank the remaining potential Referees by number in order of that side's preference (in descending order, assigning "1" to the lowest choice). The lists shall be exchanged and the single Judge with the highest combined rating shall serve as Referee. In the event of a tie, the names of the tied Judges shall be placed in a hat and one name will be drawn to serve as Referee. If the highest-rated or agreed-upon Judge declines to serve or becomes unable to serve after selection, then the procedures set forth above shall be repeated to select a new Referee. Prior to the appointment of the Referee (or

Arbitrator), any party may seek provisional remedies or preliminary injunctive relief not otherwise prohibited by this Agreement in a court of competent jurisdiction without thereby waiving its rights under this Paragraph. Arbitrators shall be selected as provided in the JAMS Rules subject to the qualifications set forth in a.

Domestic Photo/Likeness/Biography Approval: With respect to Fox's use of Player's likeness and biography (and Fox's provision of Fox-generated materials to the network licensee) in connection with the publicity and promotion of the Pilot/Series and/or elements thereof, Player shall have the following rights of approval, such approval not to be unreasonably or untimely withheld:

- a. **Still Photographs:** Still photography taken and distributed by Fox in which Player's likeness appears, provided that Player must approve: (i) 50% of all still photographs from each Pilot and Series episode submitted to Player in reasonable quantities in which Player appears alone; or (ii) 75% of all still photographs from each Pilot and Series episode submitted to Player in reasonable quantities in which Player appears with others. Still photographs taken directly from copies of the Pilot or episode of the Series delivered to the Licensee of the Series are hereby pre-approved.
- b. **Non-Photographic Likeness:** All non-photographic likenesses provided that Player provides Fox specific written objections in writing. If disapproved non-photographic likenesses are redrawn to meet Player's specific written objections, Player shall have a right of reasonable approval with respect to such redrawn non-photographic likenesses. If, after 1 redrawn non-photographic likeness, Player has not approved such likeness, Player may elect to have the non-photographic likeness redrawn, at Player's own expense, by an artist approved by Fox; provided that such redrawing can be completed within the time guidelines reasonably specified by Fox. If Player elects not to have the non-photographic likeness redrawn, Fox will select one of the existing likenesses, excluding the first such likeness.
- c. **Biographical Data:** Player's biographical data released by Fox, provided that Player gives Fox specific written objections to any disapproved biographical data.
- d. **Domestic Application Only:** All of the foregoing shall apply only to still photographs, non-photographic likenesses, and biographical data of Player that are intended for use in connection with the U.S. telecast or distribution of the Pilot and/or Series.
- e. **Time Limitations:** Player must approve the applicable percentage of each group of still photographs, each non-photographic likeness, and all biographical data within 3 business days of Fox's submission to Player or 2 business days with respect to material in which Player's still photograph, non-photographic likeness, or biographical data appears with others. Failure to disapprove any of the foregoing within such time period (or shorter period in the case of publication and/or media deadlines) will be deemed approval of the submitted material.

Paid Ads: Subject to Fox's customary "Excluded Ads" (e.g., awards, nomination, congratulatory ads and the like in which only the honoree is mentioned, group ads, teasers, etc.), Fox shall accord Player credit in all paid ads issued by Fox or under its control in connection with the Series in which any other Series regular actor is accorded credit; if any Series regular actor, other than the nominee, award recipient, or subject of the congratulatory ad, is included in the Excluded Ad, Player also shall be accorded credit in such Excluded Ad. If Fox fails to comply with any paid ad provision of the Agreement, Fox agrees, upon written notice from Player which specifies such failure to comply, to take such steps as are reasonably practicable to cure such failure with respect to future paid ads.

Hair/Make-up/Wardrobe: Subject to applicable union guidelines and budgetary limitations, while Player is rendering Series services hereunder, Fox shall consult with Player regarding Player's hair, make-up, and wardrobe.

Series Payment: If Fox exercises its option for Player's Series services for a Contract Year, Fox shall commence Lender's episodic payments no later than October 1st of the applicable year, regardless of whether actual

production of the Series has begun, subject to Fox's rights under the Agreement in the event of Lender's or Player's incapacity or default, or production interruption due to labor disputes and/or causes beyond Fox's control.

Worker's Compensation: Player's services hereunder shall be subject to all applicable workers' compensation statutes of the United States.

Assignment and Lending: The Agreement is non-assignable by Lender or Player except to an entity owned and controlled by Player and which has the exclusive right to furnish Player's services provided for in the Agreement, provided, however, that such assignment must be made prior to commencement of services for the First or subsequent applicable Contract Years, and shall be effective with respect to the then upcoming and subsequent Contract Years. The Agreement shall inure to the benefit of Fox's successors, assignees, licensees and grantees and associated, affiliated and subsidiary companies, and Fox and any subsequent assignee may freely assign the Agreement, in whole or in part, to any party; provided, however, that Fox shall remain secondarily liable thereunder unless said assignment is to an entity affiliated with, owned or controlled by or owning or controlling Fox, or which succeeds to substantially all of the assets of Fox, or to a major or so-called "mini-major" production or distribution company, or to a network, or to a similarly financially responsible entity, which assumes all of Fox's obligations hereunder in writing. Fox shall have the right to lend Player's services hereunder to any subsidiary or affiliated entities, or any motion picture production entity, provided such production entity shall have granted to Fox the right to distribute the Series. No such lending of Player's services shall relieve Fox of its obligations hereunder.

Insurance: Lender and Player shall be insured by Fox's errors and omissions and general liability insurance policies for the Series to the extent that Fox obtains and maintains such policies, subject to the terms, conditions and restrictions of such policies and endorsements thereto.

Consents Exclusions: Fox agrees not to use Player's name, voice or likeness in connection with the merchandising of, or commercial tie-ins to, gambling, religious or political advertising, alcohol, tobacco, firearms (including toy versions), drugs (prescription or otherwise), nutritional supplements, vitamins, products related to sexual activity, undergarments or feminine or personal hygiene products.

Indemnification:

- a. **By Lender and Player:** Each of Lender and Player agrees to indemnify and hold harmless Fox, its subsidiaries, affiliates, parents and its and their successors, assigns, licensees, officers, directors and employees, from and against any and all third party claims, liabilities, losses, damages, costs, expenses (including reasonable outside attorneys' fees), judgments and penalties arising out of, resulting from, based upon or incurred because of (i) the breach by Lender and/or Player of any agreement or warranty made by Lender and/or Player hereunder and (ii) any gross negligence, intentionally tortious or reckless acts or omissions committed by Lender and/or Player while providing Series services (except for negligence, excluding gross negligence as set forth above, or as otherwise required by law or matters set forth in subparagraphs b. (i) and b.(ii) below).
- b. **By Fox:** Fox agrees to indemnify, defend and hold harmless Lender and Player from and against any and all third party claims, liability, losses, damages, costs, expenses (including reasonable outside attorneys' fees), judgments and penalties arising out of, resulting from, based upon or incurred because of: (i) the addition, subtraction or alteration by Fox of any results and proceeds of Lender's and/or Player's services; (ii) materials specifically furnished by Fox for use by Lender and/or Player hereunder; and (iii) the development, production, distribution, and/or exploitation of the Series and/or elements thereof, except with respect to matters for which Lender and/or Player indemnifies Fox.

Guild/Pension, Health & Welfare: Fox shall make all required guild pension, health and welfare contributions directly to the applicable guild. There shall be no crediting of "overscale" compensation against residuals and vice-versa.

SOUNDBRACK ALBUM AGREEMENT
As of December 26, 2012

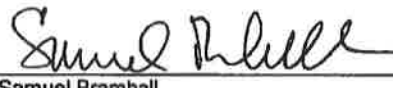
Twentieth Century Fox Television ("Fox") shall own the phonorecord masters relating to the Pilot and Series referred to in that certain Agreement (the "Agreement") dated as of December 24, 2012 between Bertha Blue, Inc. ("Lender") f/s/o David Boreanaz ("Player") and Fox. Fox shall have the right to rerecord and/or re-use Player's voice and performances for use in Soundtrack Records, provided that Fox's rights shall be limited to using Player's voice and performance from and/or in connection with the Pilot and/or Series. The royalty to be paid to Lender in connection with the issuance of a Soundtrack Record using Player's voice shall be [REDACTED] of the suggested retail list price of such Soundtrack Record, calculated, computed and paid in all respects in accordance with the Agreement between Fox and the record company distributing such Soundtrack Record. The royalty shall be reduced (pro rata) by the number of royalty bearing masters contained on the Soundtrack Record and if one or more additional artist/record producers are entitled to a royalty in connection with the exploitation of a master recording in which Player's voice is embodied, then the royalty shall be further reduced (pro rata) by the total number of such artists/record producers on such master. Neither Lender nor Player shall be entitled to any other compensation in connection with such use, excepting only minimum required applicable guild or union payments, if any.

AGREED:

TWENTIETH CENTURY FOX TELEVISION,
a unit of TWENTIETH CENTURY FOX FILM CORP.
P.O. Box 900, Beverly Hills, CA 90213
Attn: Legal Department; Fax 310.369.1872



David Boreanaz ("Player")

By: 

Samuel Bramhall
Its: Senior Vice President, Business Affairs

Bertha Blue, Inc. ("Lender")


By: _____
Title: _____

Player's Agent and Address: _____

Michael Katcher _____

Creative Artists Agency LLC _____

2000 Avenue of the Stars _____

Los Angeles, CA 90067 _____

(424) 288-2000 (424) 288-2900
(Phone) (Fax)

e-mail: mkatcher@caa.com

cc:

Patti Felker, Esq.
Felker Toczek Gellman Suddleson LLP
10880 Wilshire Boulevard, Suite 2070
Los Angeles, CA 90024
Phone: (310) 441-8000; Fax: (310) 441-8010;
e-mail: patti@ftgsllaw.com

Exhibit 6

AGREEMENT SERIES SERVICES WITH OPTIONS

PLAYER: EMILY DESCHANEL **LENDER (If Loan-Out):** SNOOKER DOODLE PRODUCTIONS, INC. **DATE:** AS OF 11/25/08
MINOR: NO **U.S. CITIZEN:** YES **TEST DATE:** N/A
ROLE: TEMPERANCE BRENNAN **TITLE:** "BONES" **LENGTH:** 1 HOUR

I. TERMINATION AND NOVATION OF PRIOR AGREEMENT


Reference is hereby made to the Agreement for Test with Pilot With Series Options dated March 4, 2005 (if and as subsequently revised and amended), together with the Rider and Standard Terms thereto (Exhibit "A") and the Borrowing Agreement dated as of July 12, 2005 (collectively the "Prior Agreement") with respect to Player's Series services. The Prior Agreement is terminated as of August 13, 2008 as to Fox, Lender and Player's respective rights and obligations for the Fourth and subsequent Contract Years (as set forth therein). It is intended by Fox, Lender and Player that upon signature hereof this Agreement shall constitute a novation of the Prior Agreement with respect to Player's services for the First (2008-09) and (if applicable) the Second (2009-10), Third (2010-11), Fourth (2011-12) and Fifth (2012-13) Contract Years for the Series as set forth below. Notwithstanding the foregoing, the Soundtrack Album Agreement between the parties dated as of March 7, 2005 (the "Soundtrack Album Agreement") shall remain in full force and effect and is not terminated.

II. PLAYER'S SERVICES IN SERIES ("Series"):

SERIES OPTIONS: Fox hereby engages Player, on a pay-or-play basis, to render services in the First Contract Year in accordance with the guarantee/episodic compensation provision set forth below. Player grants Fox exclusive, irrevocable, consecutive, dependent options to require Player to render services in each Contract Year of the Series. Series Options for subsequent years are for the Ratio of all episodes produced in each applicable year.

OPTION EXERCISE FOR SUBSEQUENT CONTRACT YEARS: June 30 of the applicable year




GUARANTEE/EPISODIC COMPENSATION: In consideration of all rights granted and services rendered by Player hereunder in connection with the Series (including one run only thereof, except with respect to foreign telecasts as set forth below), Player shall be paid the Episodic Compensation set forth hereinbelow. In the First Contract Year, Player guaranteed, pay or play, the following Ratio of episodes produced during the First Contract Year, but no less than the Minimum Number; provided, however, that if Fox does not exercise its option for additional episodes, said guarantee instead shall be the Ratio of episodes produced pursuant to the initial order, but no less than the Minimum Number. In subsequent Contract Years for which an option is exercised, Player guaranteed, pay-or-play, the following Ratio of episodes produced, but no less than the Minimum Number. If Fox makes multi-segment episodes, each full segment will constitute 1 episode for purposes of Guarantee, and Episodic Compensation for 1 episode will be payable for each such segment.

Contract Year	Minimum Number	Ratio	Episodic Compensation*
First:	13	ASP	
Second:	13	ASP	
Third:	13	ASP	
Fourth:	13	ASP	
Fifth:	13	ASP	






*Fox shall have the right at its sole election at any time and from time to time to increase the Episodic Compensation.

"ASP" = All Original Shows Produced


Except as otherwise specifically set forth herein, licensee cancellation of Series (or reductions of the licensee order) shall not relieve Fox of the obligation to pay episodic compensation for the Minimum Number of episodes indicated for any Contract Year for which Fox exercises its option.

SEASONS 4-5 PICKUP BONUS: Fox will pay Lender f/s/o Player the total sum of  payable one-half (i.e., ) upon full signature of this Agreement by Lender and Player and the other half (i.e., ) upon Fox's acceptance of a written network order for the production of new, original episodes of the Series for the 2009-2010 broadcast season.

III. TERMS AND CONDITIONS

RESIDUALS: ****To the extent permitted by SAG, the additional  payment is not Episodic Compensation, but is a prepayment of foreign residuals for the each episode of the Series. Fox shall have the right at its sole election at any time and from time to time to pay the additional  payment as Episodic Compensation in which case such payment will not be treated as a prepayment of foreign residuals. The "Total Compensation" is defined as the Episodic Compensation plus, if applicable, the  prepayment of foreign residuals and shall be quoted as  for the First Contract Year. Foreign TV-SAG Minimum; U.S. & Canada-SAG Minimum; Theatrical Use-Greater of  or SAG Minimum; Supplemental Markets-SAG Minimum.

SCREEN CREDIT: On each Series episode in which Player recognizably appears, Player shall be accorded credit in the main/opening titles; on a separate card; grouped among the cards accorded to other Series regular actors; in (at Fox's election) either last (preceded by "and") position among Series regular actors or in a "Laverne & Shirley" format (e.g., two names on one card, but not stacked, in first position) for the credits of Player and the actor playing "Agent Booth" (Fox acknowledges that Player's credit is currently accorded in such "Laverne & Shirley" format); in a type, size, boldness and duration (except as set forth in the previous clause) no less favorable than the credit accorded any other Series regular actor. All other aspects of such credit are at Fox's discretion. Inadvertent or casual failure to accord credit as provided herein shall not be deemed to be a breach of this Agreement. Player shall not be entitled to seek injunctive relief for a failure to accord credit. Fox agrees, upon receipt of written notice from Player specifying any such failure, to promptly take such steps as are reasonably practicable to cure such failure on a prospective basis.

RIGHTS AND SERVICES: Fox owns all rights in Player's services, name, likeness and voice in connection with the Role, Pilot, Series and each episode and Player grants Fox as a "work made for hire" all such rights in all material furnished, suggested or performed by Player or material owned or controlled by Player and incorporated or used in the Pilot or Series, to use and exploit in all media now known or hereafter devised, throughout the universe, in perpetuity. If Episodic Compensation exceeds the amounts set forth in SAG TV 14.(b), Episodic Compensation includes buy out of overall production and work time for full production season. To the extent permitted by SAG, the compensation payable in connection with the Pilot and each episode of the Series shall be deemed a prepayment of overtime and premium days (there shall be no buyout of forced calls or meal penalties). Player consents to the use of Player's name, voice, likeness (actual or simulated, in character only or in or from the Promotional Footage) and biography in merchandising. For merchandising that includes Player, Fox shall pay Player  of Merchandising Net Receipts reducible on a dollar for dollar

basis to a floor of [REDACTED] of Merchandising Net Receipts to the extent that Fox is obligated to make payments to another person in connection with the same merchandising item.

EXCLUSIVITY: Maximum required by the applicable Licensee as permitted by SAG in television and series programming. Player warrants that Player has no outstanding commitments which will materially interfere with the complete performance of all of Player's obligations nor shall Player enter into any commitment which materially conflicts or interferes with Player's material obligations to Fox (which shall at all times be in first position) or with any rights granted to Fox pursuant to this Agreement. Player shall give Fox reasonable advance notice of any and all legal obligations of Player mandated by federal, state or local authority (e.g., jury duty) which might interfere with Player's services hereunder. In the event of any such obligation, Player shall cooperate fully with Fox in taking such action as Fox deems necessary to reschedule the obligation. Player's services shall be exclusive in television and series programming, subject to the following: Provided Player is not in material default and subject to Licensee approval with respect to Player's services in connection with U.S. commercials, Player may render unlimited non-identifiable voice over services, make U.S. and non-U.S. telecast commercials (including, without limitation, infomercials), make radio, talk, game, news, panel and award show guest (non-host, non-recurring) appearances and up to 3 other series guest appearances (including MOWs and mini-series if not longer than 6 telecast hours in the aggregate) during each 13-week period; provided any of such permitted services or appearances are not in the Role or as a character substantially similar to the Role, are not in a role which is a continuing role, are not during production periods, are not on programs known at the time such engagement is accepted by Player to be scheduled to be telecast during the premiere week of the Series, at any time prior to November 15th in any Series Contract Year, during so called "sweeps" periods or during the regularly scheduled first run telecast time period of the Series, and, are not on a program which, to the best of Player's knowledge, has as any sponsor, a sponsor whose products are a competitor with any product of a major sponsor of the Series (Player shall use reasonable efforts to obtain such program telecast information and inform Fox in a timely manner).

PUBLICITY & RELATED SERVICES: For each Contract Year for which Fox exercises or intends to exercise its Series option, Player will: (1) render services in connection with standard openings, closings, lead-ins, lead-outs, Pilot, Series and episodic trailers, behind-scene shots, on-set interviews, Promotional Films, and other enhanced or added value material and promotional footage (collectively, "Promotional Footage") for no additional compensation (with respect to behind the scenes shots, on-set interviews and the other promotional footage set forth above, Twentieth shall not use footage which shows Player in a subjectively embarrassing or derogatory light); (2) make not less than, as Fox may request, five promotional and institutional non-performing Series-related appearances per each Contract Year for non-paying audiences (including, at Fox's election and without limitation, the Television Critics Association Press Tour in July and January (the "TCAS") and the May up-front presentations in New York (the "Up-Fronts") and international screenings in L.A.) for no additional compensation; and (3) do the Licensee's still photo gallery shoot, the Licensee's "on-air" image campaign, the Licensee's satellite press tour and such other publicity and related services as Fox or the Licensee may reasonably require in connection with the Pilot and/or Series for no additional compensation. Except with respect to Player's services (if and as required) for the TCAS, the Up-Fronts, and in the month preceding the Series season premieres, Player's services under subparagraphs (1), (2) and (3) above shall be subject to Player's professional availability outside of production periods. If Player is required to travel in connection with the foregoing services, Fox will provide/reimburse such first class travel, first class accommodations, and expenses as required by SAG; provided that Fox shall use reasonable efforts to ensure that, on an "if available" and "if used" basis, Player's travel, accommodations and expenses in connection with an occurrence for which Player renders the foregoing services are substantially similar to the travel, accommodations and expenses provided by Fox to any other Series regular actor in connection with the same occurrence.

CONSENTS: Player consents to the use of Player's name, voice, likeness (actual or simulated, in character or otherwise related to Player's services hereunder only, subject, with respect to publicity and promotional uses, to Player's approval rights as set forth in the Rider) and biography (subject, with respect to publicity and promotional uses, to Player's approval rights as set forth in the Rider), with no additional compensation to Player (unless specified herein or in the Soundtrack Album Agreement), in any and all media now known or hereafter developed, throughout the universe and in perpetuity, in connection with (1) the exploitation of the Pilot/Series or elements thereof; (2) any ancillary and subsidiary uses of the Pilot/Series or elements thereof; (3) the advertising, promotion and marketing of the Pilot/Series or elements thereof; (4) the "institutional" advertising of Fox, its affiliated companies and its licensees; (5) the advertising of products or services of Fox's and its Licensee's commercial sponsors (including, without limitation, commercial tie-ins, product placement and point-of-purchase campaigns), provided that such advertising occurs in conjunction with the publicizing, promotion, production or distribution of the Pilot/Series or elements thereof and does not constitute a direct endorsement of such product or service; (6) computer, Internet, CD Rom, DVD, BD-ROM, Blu-ray and other high definition formats, replay, games, interactive, wireless applications, and other "new media" exploitation, and e-commerce related to the Pilot/Series or elements thereof; (7) literary and music publishing related to the Pilot/Series and elements thereof; and (8) sound recordings and jacket covers (whether or not Player's performance is contained therein) related to the Pilot/Series or elements thereof. Should Fox require Player's additional services beyond those required hereunder, Fox and Player will negotiate in good faith with respect to Player's compensation for such additional services as, when and to the extent required by SAG. For purposes of this Paragraph, "or elements thereof" shall include, without limitation, the use of Promotional Footage.

LAWS: Player agrees that the state and federal courts in Los Angeles County, California will have personal jurisdiction over Player, and will be the exclusive forum for any lawsuits arising out of this Agreement, and that California law (as governs contracts entered into and fully performed in California) will apply. If any provisions hereof are contrary to law, they will be modified to conform. Player will abide by "anti-payola" requirements.

PRODUCER'S REMEDIES: Fox will have all rights available at law, equity and under SAG for Player's incapacity, default, material breach or if Fox's normal production operations are materially hampered or otherwise materially interfered with by reason of any disruptive events (including, but not limited to, a labor dispute). In any such event, the Minimum Number for the applicable Contract Year may be reduced at Fox's sole election by 1 for each episode for which production is not commenced or completed due to said event to not less than 7. Player acknowledges that the services and the rights herein granted are of a special, unique, unusual, extraordinary and intellectual character giving them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages, and that Player's default or material breach will cause Fox irreparable injury and damage. If Fox in its reasonable, good faith business judgment believes that Player may fail or refuse to perform material services (including publicity and related services as set forth above) hereunder, Fox may require written assurance of Player's intent to perform the requested services. If Fox does not receive such assurance within 24 hours (or less, if production exigencies exist), then Player is in default and Fox reserves its rights and remedies pursuant to this agreement, at law and in equity (for purposes of this 24 hour turnaround only, any notice that is mailed as opposed to sent via messenger, overnight delivery or fax, shall be deemed received within 2 days of Twentieth's mailing such notice). Player agrees that Fox shall be entitled to seek injunctive and other equitable relief if Player commits or threatens to commit a default or otherwise threatens to materially breach this Agreement. Fox may at any time, without legal justification or excuse, elect not to use Player's services or to have any further obligations to Player except any continuing obligations by Fox to insure and indemnify Player as set forth hereinafter, to pay residuals required by SAG, to accord Player credit on the Pilot and each Series episode in which Player recognizably appears, and to pay Player the Total Compensation (as defined above) with respect to the applicable employment period or Contract Year for which Fox has exercised its option. If Fox elects not to use Player's services as set forth in the preceding sentence, then any compensation earned by Player in the (non-precedentially) television industry during the period that Fox could have required Player to render services under this Agreement shall reduce Fox's obligation to pay Player compensation hereunder, and Player shall immediately notify Fox in writing of any such compensation earned by Player in the (non-precedentially) television industry.

SPECIAL PROVISIONS: This agreement shall be governed by either the SAG or AFTRA collective bargaining agreement as determined by Fox in its sole discretion. In that regard, the parties acknowledge that Fox may elect to have the AFTRA Code be applicable in lieu of the SAG Agreement, in

which case references herein to SAG shall refer to AFTRA. In connection therewith, Player recognizes that certain rights granted under the SAG Agreement must be specifically consented to under AFTRA and, accordingly, Player consents to exhibition of the Pilot and Series in Supplemental Markets, use of excerpts containing Player's performances for minimum AFTRA program fees pursuant to Paragraphs 73.(d)(2), 73(d)(8) and 73(d)(10) of the Network TV Code, and crediting of Player's over-scale compensation against overtime, rest time, overall production and work time to the maximum extent permitted under Paragraph 56 of the Network TV Code; and Player further consents to the use of any Pilot or Series excerpt containing Player's performance to the full extent permitted under the AFTRA Agreement, at the applicable minimum fee, if any, set forth therein for each such use. This Agreement shall be effective for all purposes as a binding agreement. Player warrants and represents that Player is and shall during the term of this Agreement continue to be a member in good standing of all applicable collective bargaining units having jurisdiction over Player's services under this Agreement. Player's services hereunder shall be pursuant to Licensee requirements, conducted at all times by Player in a professional manner, and performed consistent with Fox's reasonable directions, practices and policies that reasonably relate to the services being provided (except as to creative matters, to which the "reasonable" restriction shall not apply). Incorporated in this Agreement by reference are Fox's Standard Terms (including the definition of "Merchandising Net Receipts") which shall be subject only to such changes thereto as may be mutually agreed upon in writing following good faith negotiation within Fox's customary parameters for persons of Player's stature within the television industry as of the date of this agreement. In the event of a conflict between the Agreement and attached Rider, on the one hand, and the Standard Terms, on the other hand, the Agreement and attached Rider will control. All of Fox's obligations are expressly conditioned upon Player's completion to Fox's satisfaction of Employment Eligibility Verification Form I-9.

NOTICES: All written notices from Fox to Player may be given by mail (effective upon mailing), by messenger, overnight delivery or fax and/or e-mail transmission and shall be sent to the address and/or e-mail address and/or fax number (as applicable) set forth below. Fax, e-mail, overnight or messengered delivery will be effective on the calendar date sent. Any notice date which is a non-business day (i.e., Saturday, Sunday or industry holiday), or any notice period which expires on a non-business day, shall be automatically extended to the next business day.

This Agreement (including the Rider attached hereto and incorporated herein by this reference) constitutes the entire understanding between the parties concerning the subject matter hereof and shall not be modified or amended except by the written agreement of the parties. In the event of a conflict between this Principal Agreement and the Rider, the Rider shall control.

AGREED:

TWENTIETH CENTURY FOX TELEVISION,
a unit of TWENTIETH CENTURY FOX FILM CORP.
P.O. Box 900, Beverly Hills, CA 90213
Attn: Legal Department; Fax 310.369.1872

EMILY DESCHANEL ("Player")

Redacted
Player's Social Security Number

By: Samuel Bramhall
Its: Sr. Vice-President, Business Affairs

SNOOKER DOODLE PRODUCTIONS, INC. ("Lender")

Player's Agent and Address:
Rhonda Price
The Gersh Agency
41 Madison Avenue, 33rd Floor
New York, New York 10010
212.634.8139 425.675.4444
(Phone) (Fax)
e-mail: rprice@gershny.com

By:
Title:
Redacted
Federal I.D. Number

cc: Adam Kaller, Esq.
Hansen, Jacobson, Teller, Hoberman,
Newman, Warren & Richman, LLP
450 N. Roxbury Drive, 8th Floor
Beverly Hills, California 90210-4222
Phone: 310.248.3154; Fax: 310.550.5525
e-mail: ak@hjth.com

**RIDER TO THE AGREEMENT FOR SERIES SERVICES WITH OPTIONS
DATED AS OF NOVEMBER 25, 2008 BETWEEN TWENTIETH CENTURY FOX TELEVISION AND
SNOOKER DOODLE PRODUCTIONS, INC. f/s/o EMILY DESCHANEL**

Producer Credit: Subject to network/licensee approval and subject to Fox exercising the applicable option, for each Series episode produced and broadcast for which Player has completed all material services commencing with the first original episode for which final credits are submitted following full signature of this Agreement by Lender and Player, Fox shall accord Player "Producer" credit on a separate card, in the main, opening or end titles wherever other producer credits appear (excluding the credits accorded to any showrunners or Barry Josephson), in the same size, style and duration as other producer credits accorded in connection with the Series, excluding the credits to any showrunners and/or Barry Josephson. Except as expressly stated above, all characteristics of Player's credit will be determined by Fox. Any failure to accord Player credit will not be considered a breach of this Agreement and will not entitle Player to terminate this Agreement or seek injunctive relief. Upon written notice from Player, Fox will make reasonable efforts to correct future copies of the applicable episode for any credit error that may occur. Notwithstanding the foregoing, Player's Co-Producer credit for episodes titled prior to Lender's and Player's full signature of this Agreement shall remain unaffected and subject to the terms and conditions of the parties prior agreement for Fox to accord such Co-Producer credit, provided that Player shall receive only one such credit (Co-Producer or Producer) on any single episode of the Series.

Dressing Room: While Player is rendering services hereunder, Fox shall provide Player with a private, exclusive (during production periods), first class dressing room, which, if not a stage dressing room, shall be no less than a star wagon and which shall include customary first class amenities such as TV, VCR, sofa, bathroom, heat/air conditioner, microwave, and, provided a hard line exists, a phone (Player to pay all long-distance and toll charges - no cell phones), as are available at the particular production facility/site. Such dressing room and amenities shall be substantially similar to the dressing rooms and amenities provided to other Series regulars.

Domestic Photo/Likeness/Biography Approval: With respect to Fox's use of Player's likeness in connection with the publicity and promotion of the Pilot/Series and/or elements thereof, Player shall have the following rights of approval, such approval not to be unreasonably or untimely withheld:

- a. **Still Photographs:** Still photography taken and distributed by Fox in which Player's likeness appears, provided that Player must approve: (i) 50% of all such still photographs from each Pilot and Series episode submitted to Player in reasonable quantities in which Player appears alone; or (ii) 75% of all still photographs from each Pilot and Series episode submitted to Player in reasonable quantities in which Player appears with others. Still photographs taken directly from copies of the Pilot or episode of the Series delivered to the Licensee of the Series are hereby pre-approved.
- b. **Non-Photographic Likeness:** All non-photographic likenesses provided that Player provides Fox specific written objections in writing. If disapproved non-photographic likenesses are redrawn to meet Player's specific written objections, Player shall have a right of reasonable approval with respect to such redrawn non-photographic likenesses. If, after 1 redrawn non-photographic likeness, Player has not approved such likeness, Player may elect to have the non-photographic likeness redrawn, at Player's own expense, by an artist approved by Fox; provided that such redrawing can be completed within the time guidelines reasonably specified by Fox. If Player elects not to have the non-photographic likeness redrawn, Fox will select one of the existing likenesses.
- c. **Biographical Data:** Player's biographical data released by Fox, provided that Player gives Fox specific written objections to any disapproved biographical data.
- d. **Domestic Application Only:** All of the foregoing shall apply only to still photographs, non-photographic likenesses, and biographical data of Player that are intended for use in connection with the U.S. telecast or distribution of the Pilot and/or Series.

- e. **Time Limitations:** Player must approve the applicable percentage of each group of still photographs, each non-photographic likeness and all biographical data within 3 business days of Fox's submission to Player or 2 business days with respect to material in which Player's still photograph, non-photographic likeness, or biographical data appears with others. Failure to disapprove any of the foregoing within such time period (or shorter period in the case of publication and/or media deadlines) will be deemed approval of the submitted material.

Paid Ads: Subject to Fox's customary "Excluded Ads" (e.g., awards, nomination, congratulatory ads and the like in which only the honoree is mentioned, group ads, teasers, etc.), Fox shall accord Player credit in all paid ads issued by Fox or under its control in connection with the Series in which any other Series regular actor is accorded credit (other than a marquee value star); if any Series regular actor, other than a marquee value star and other than the nominee, award recipient, or subject of the congratulatory ad, is included in the Excluded Ad, Player also shall be accorded credit in such Excluded Ad. If Fox fails to comply with any paid ad provision of the Agreement, Fox agrees, upon written notice from Player which specifies such failure to comply, to take such steps as are reasonably practicable to cure such failure with respect to future paid ads.

Hair/Make-up/Wardrobe: Subject to applicable union guidelines and budgetary limitations, while Player is rendering Series services hereunder, Fox shall consult with Player regarding Player's hair, make-up, and wardrobe.

Series Payment: If Fox exercises its option for Player's Series services for a Contract Year, Fox shall commence Lender's episodic payments no later than October 1st of the applicable year, regardless of whether actual production of the Series has begun, subject to Fox's rights under the Agreement in the event of Lender's and/or Player's incapacity or default, or production interruption due to labor disputes and/or causes beyond Fox's control.

Contingent Compensation:

- a. **MAGR:** Subject to (i) Fox's receipt of an original of this Agreement fully-executed by Lender and Player and (ii) Lender's and Player's complete performance of all of the material terms and conditions of this Agreement, Lender shall be entitled to receive an amount equal to [REDACTED] of the Defined Modified Adjusted Gross Receipts ("MAGR") derived from the Series hereunder.
- b. **Definitions:** Lender's MAGR shall be computed, determined and paid pursuant to Fox's Pre-Negotiated Television Definition of Defined MAGR (with Television Distribution Fees of [REDACTED] and a Fox Administrative Charge of [REDACTED]). The Television Distribution Fees will not be charged with respect to Defined Gross Receipts derived from the initial network license or any extensions or renewals thereof for a U.S. Network; provided, however, in the event that Fox enters into an agreement with such a network for the renewal of a Series following the expiration of the initial network license ("Network Renewal") and such Network Renewal provides for such network to pay to Fox, prospectively, payments in excess of the pattern budget for such additional seasons of the Series ("Premium License Fee"), then Fox shall charge such Television Distribution Fees on the amount by which the Premium License Fee exceeds the pattern budget. The Television Definition of Defined MAGR shall apply, subject only to those changes thereto as may be mutually agreed upon in writing following good faith negotiation within Fox's customary parameters for persons of Player's stature as of the date of this agreement, but said definition shall include, inter alia, the following:
- i. Production Charges shall include all direct and directly allocable costs of production. Distribution Expenses shall include actual, direct or directly allocable costs.
 - ii. Series will not be cross-collateralized except that a Series may be cross-collateralized with a Pilot(s) and/or Presentation(s) on which it is based.
 - iii. The Fox Financing Charge shall be [REDACTED]. There shall be no Fox Administrative Charge charged on Fox Financing Charge or Fox Financing Charge on

Fox Administrative Charge or Fox Financing Charge on Fox Financing Charge; provided, however, Fox Financing Charge shall be treated as a recoupable item.

- iv. Production Charges will not include any third-party contingent compensation (excluding only fixed amount bonuses and royalties), advances or deferrals payable out of or measured by MAGR, net proceeds or other contingent compensation definition or calculation.
- v. "Back-end" agency commissions (i.e., percentages of contingent compensation or deferrals payable out of contingent compensation) will be deducted in the same manner as Distribution Expenses and will not otherwise reduce Lender's contingent compensation hereunder; and "front-end" agency commissions (i.e., percentages of license fee) will be deducted as items of Production Charges.
- vi. In the event a Fox affiliate distributes the Series, Fox will not charge a distribution fee in excess of the Fox Distribution Fees.

Distribution Controls:

- a. **General:** Fox shall have complete, exclusive and unqualified discretion and control as to the time, manner, and terms of its distribution, exhibition and exploitation of each Series episode (including the Pilot), separately or in connection with other programs, in accordance with such policies, terms and conditions and through such parties as Fox in its business judgment may in good faith determine are consistent with business policy and proper or expedient and the decision of Fox in all such matters shall be binding and conclusive upon Lender and Player. Notwithstanding the foregoing, Fox shall accord good faith (meaningful) consultation to Player with respect to the initial domestic off-network sales plan, subject to the reasonable availability and reasonable response time of Player. Fox makes no express or implied warranty or representation as to the manner or extent of any distribution or exploitation of each Series episode (including the Pilot) nor the amount of money to be derived from the distribution, exhibition and exploitation of each Series episode (including the Pilot), nor as to any maximum or minimum amount of such monies to be expended in connection therewith. Fox does not guarantee the performance by any Subdistributor, licensee or exhibitor, of any contract regarding the distribution and exploitation of each Series episode (including the Pilot).
- b. **Dealings with Affiliates:** Each of Lender and Player acknowledges that Fox is part of a diversified, multi-faceted, international company, whose affiliates include, or may in the future include, among others, exhibitors, television "platforms", networks, stations and programming services, video device distributors, record companies, internet companies, so called "E.Commerce companies", publishers (literary and electronic) and wholesale and retail outlets (individually or collectively, "**Affiliated Company or Companies**"). Each of Lender and Player further acknowledges that Fox has informed Lender and Player that Fox intends to make use of Affiliated Companies in connection with its distribution and exploitation of the Series episodes (including the Pilot), as, when and where Fox deems it appropriate to do so. Each of Lender and Player expressly waives any right to object to such distribution and exploitation of any Series episode (including the Pilot) (or aspects thereof) or assert any claim that Fox should have offered the applicable distribution/exploitation rights to unaffiliated third parties (in lieu of, or in addition to, offering the same to Affiliated Companies). In consideration thereof, Fox agrees that Fox's transactions with Affiliated Companies will be on monetary terms comparable to the terms on which the Affiliated Company enters into similar transactions with unrelated third party distributors for comparable programs. Each of Lender and Player agrees that Lender's and/or Player's sole remedy against Fox for any alleged failure by Fox to comply with the terms of this paragraph shall be actual damages, and each of Lender and Player hereby waives any right to seek or obtain preliminary or permanent equitable relief or punitive relief in connection with any such alleged failure.
- c. **Arbitration:** Any dispute arising under the provisions of this "Distribution Controls" Paragraph shall be arbitrated by, and under the rules of, J.A.M.S. ("**JAMS**") in binding arbitration in Los

Angeles, California and before a mutually selected arbitrator experienced in the United States television industry. Although each side shall advance one-half of the fee of the arbitrator and for JAMS' services, the prevailing party in such arbitration shall be entitled to recover all costs of arbitration, including reasonable outside attorneys' fees and costs.

Worker's Compensation: Player's services hereunder shall be subject to all applicable workers' compensation statutes of the United States.

Assignment and Lending: The Agreement is non-assignable by Player except to an entity owned and controlled by Player and which has the exclusive right to furnish Player's services provided for in the Agreement, provided, however, that such assignment must be made prior to commencement of services for the First or subsequent applicable Contract Years, and shall be effective with respect to the then upcoming and subsequent Contract Years. The Agreement shall inure to the benefit of Fox's successors, assignees, licensees and grantees and associated, affiliated and subsidiary companies, and Fox and any subsequent assignee may freely assign the Agreement, in whole or in part, to any party; provided, however, that Fox shall remain secondarily liable thereunder unless said assignment is to an entity affiliated with, owned or controlled by or owning or controlling Fox, or which succeeds to substantially all of the assets of Fox, or to a major or so-called "mini-major" production or distribution company, or to a network, or to a similarly financially responsible entity which assumes all of Fox's obligations hereunder in writing. Fox shall have the right to lend Player's services hereunder to any subsidiary or affiliated entities, or any motion picture production entity, provided such production entity shall have granted to Fox the right to distribute the Series. No such lending of Player's services shall relieve Fox of its obligations hereunder.

Insurance: Lender and Player shall be insured by Fox's errors and omissions and general liability insurance policies for the Pilot and Series to the extent that Fox obtains and maintains such policies, subject to the terms, conditions and restrictions of such policies and endorsements thereto.

Consents Exclusions: Fox agrees not to use Player's name, voice or likeness in connection with the merchandising of, or commercial tie-ins to, gambling, religious or political advertising, alcohol, tobacco, drugs, firearms or other weaponry, medications (prescription or otherwise), nutritional supplements, vitamins, products related to sexual activity, undergarments or feminine or personal hygiene products.

Guild/Pension, Health & Welfare: Fox shall make all required guild pension, health and welfare contributions directly to the applicable guild. There shall be no crediting of "overscale" compensation against residuals and vice-versa.

Indemnification:

- a. **By Lender and Player:** Each of Lender and Player agrees to indemnify and hold harmless Fox, its subsidiaries, affiliates, parents and its and their successors, assigns, licensees, officers, directors and employees, from and against any and all third party claims, liabilities, losses, damages, costs, expenses (including reasonable outside attorneys' fees), judgments and penalties arising out of, resulting from, based upon or incurred because of (i) the breach by Lender and/or Player of any agreement or warranty made by Lender and/or Player hereunder and (ii) any gross negligence, intentionally tortious or reckless acts or omissions committed by Lender and/or Player while providing Pilot or Series services (except for negligence, excluding gross negligence as set forth above, or as otherwise required by law or matters set forth in subparagraphs b. (i) and b.(ii) below).
- b. **By Fox:** Fox agrees to indemnify, defend and hold harmless Lender and Player from and against any and all third party claims, liability, losses, damages, costs, expenses (including reasonable outside attorneys' fees), judgments and penalties arising out of, resulting from, based upon or incurred because of: (i) the addition, subtraction or alteration by Fox of any results and proceeds of Lender's and/or Player's services; (ii) materials specifically furnished by Fox for use by Lender and/or Player hereunder; and (iii) the development, production, distribution, and/or exploitation of the Series and/or elements thereof, except with respect to matters for which Lender and/or Player indemnifies Fox.

Confidentiality: The timing, content and manner of dissemination of the terms of this Agreement (including the initial press release) shall be subject to the prior, mutual approval of Fox, Lender and Player. In this connection the parties agree not to disclose financial terms of this Agreement to any third parties, other than (a) as required by subpoena, court order, SEC or other administrative agencies, (b) to attorneys, accountants and agents representing Lender and Player, Fox or affiliates of Fox (c) to third party auditors in connection with a participations audit, (d) to financial institutions lending or contemplating lending to Lender and/or Player or Fox or any affiliates of Fox, and/or (e) for quote purposes.

Exhibit 7

AGREEMENT FOR SERIES SERVICES WITH OPTIONS

PLAYER: EMILY DESCHANEL **LENDER (If Loan-Out):** SNOOKER DOODLE PRODUCTIONS, INC. **DATE:** AS OF December 24, 2012
MINOR: NO **ELIGIBLE TO WORK IN THE US:** YES
ROLE: "TEMPERANCE BRENNAN" **TITLE:** "BONES" **LENGTH:** 1 HOUR

I. TERMINATION OF PRIOR AGREEMENT

Reference is hereby made to the Agreement for Series Services with Options dated as of November 25, 2008 (if and as subsequently revised and amended), together with the Rider and Standard Terms thereto (Exhibit "A") (collectively the "Prior Agreement") with respect to Player's Series services. The Prior Agreement was terminated as of December 21, 2012 as to Fox, Lender and Player's respective rights and obligations for the Fifth and subsequent Contract Years (e.g., the Eighth and subsequent Series broadcast years, as set forth therein, provided that any payments made under the Prior Agreement in connection with the Eighth Series broadcast year are creditable against payments due hereunder); Fox's ownership of the Series (including the Pilot) and the results and proceeds of Player's services thereunder (including ancillary rights thereto as set forth in the Prior Agreement), as well as the provisions of the Prior Agreement regarding insurance, indemnification, payment of residuals and credit, survive such termination. Lender and Player represent and warrant that neither has entered into any obligation or undertaking since the termination of the Prior Agreement, including any obligation or undertaking that would interfere or conflict with any of the terms and conditions of this Agreement. It is intended by Fox, Lender and Player that upon signature hereof this Agreement shall define the respective rights and obligations of the parties hereto with respect to Player's services for the First (2012-13) and (if applicable) the Second (2013-14) and Third (2014-15) Contract Years for the Series as set forth below.

II. OPTIONS FOR PLAYER'S SERVICES IN SERIES ("Series"):

SERIES OPTIONS: Fox hereby engages Player, on a pay-or-play basis, to render services in the First and Second Contract Years in accordance with the guarantee/episodic compensation provision set forth below. Player grants Fox exclusive, irrevocable, consecutive, dependent options to require Player to render services in the Third Contract Year of the Series. Series Options for subsequent years are for the Ratio of all episodes produced in each applicable year.

OPTION EXERCISE FOR SUBSEQUENT CONTRACT YEARS: June 30 of the applicable year.

GUARANTEE/EPISODIC COMPENSATION: In consideration of all rights granted and services rendered by Player hereunder in connection with the Series (including one run only thereof except with respect to foreign telecasts as set forth below), Player shall be paid the Episodic Compensation set forth hereinbelow. In each Contract Year for which an option is exercised, Player is guaranteed, pay-or-play, the following Ratio of original episodes produced, but no less than the Minimum Number. If Fox produces multi-segment episodes, each original full segment will constitute 1 episode for purposes of Guarantee, and Episodic Compensation for 1 episode will be payable for each such segment.

Contract Year	Minimum Number	Ratio	Episodic Compensation*
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First:	22**	ASP	
Second:	22**	ASP	
Third:	22**	ASP	






*Fox shall have the right at its sole election at any time and from time to time to increase the Episodic Compensation (provided that Exclusivity shall not be increased).

** Subject to Player not being in material default and the provisions hereof regarding Force Majeure and Fox Disability.


"ASP" = All Original Episodes Produced. If Fox produces a clip/compilation episode that includes new, original material for which Player renders acting services, Player's fee for such episode will be negotiated in good faith taking into consideration the amount of such new material and the license fee received by Fox for the episode, but in no event greater than the fees set forth herein.

Except as otherwise specifically set forth herein, licensee cancellation of Series (or reductions of the licensee order) shall not relieve Fox of the obligation to pay episodic compensation for the Minimum Number of episodes indicated for any Contract Year for which Fox exercises its option.

III. TERMS AND CONDITIONS

RESIDUALS: ****To the extent permitted by SAG, the additional  payment is not Episodic Compensation, but is a prepayment of foreign residuals for the Pilot and each episode of the Series. Fox shall have the right at its sole election at any time and from time to time to pay the additional  payment as Episodic Compensation in which case such payment will not be treated as a prepayment of foreign residuals. The "Total Compensation" is defined as the Episodic Compensation plus, if applicable, the  prepayment of foreign residuals and shall be quoted as  Foreign TV-SAG Minimum; U.S. & Canada-SAG Minimum; Theatrical Use-Greater of  or SAG minimum; Supplemental Markets-SAG Minimum.

SCREEN CREDIT: On each Series episode in which Player recognizably appears, Player shall be accorded credit in the main/opening titles; on a separate card; grouped among the cards accorded to other Series regular actors; in (at Fox's election) either last (preceded by "and") position among Series regular actors or in a "Laverne & Shirley" format (e.g., two names on one card, but not stacked, in first position) for the credits of Player and the actor playing "Agent Booth" (Fox acknowledges that Player's credit is currently accorded in such "Laverne & Shirley" format); in a type, size, boldness and duration (except as set forth in the previous clause) no less favorable than the credit accorded any other Series regular actor. All other aspects of such credit are at Fox's discretion. Inadvertent or casual failure to accord credit as provided herein shall not be deemed to be a breach of this Agreement. Player shall not be entitled to seek injunctive relief for a failure to accord credit. Fox agrees, upon receipt of written notice from Player specifying any such failure, to promptly take such steps as are reasonably practicable to cure such failure on a prospective basis.

RIGHTS AND SERVICES: Fox owns all rights in Player's services, name, likeness and voice in connection with the Role, Series and each episode and Player grants Fox as a "work made for hire" all such rights in all material furnished, suggested or performed by Player or material owned or controlled by Player and incorporated or used in the Series, to use and exploit in all media now known or hereafter devised, throughout the universe, in perpetuity. If Episodic Compensation exceeds the amounts set forth in SAG TV 14.(b), Episodic Compensation includes buy out of overall production and work time for full production season. To the extent permitted by SAG, the compensation payable in connection with each episode of the Series shall be deemed a prepayment of overtime and premium days (there shall be no buyout of forced calls or meal penalties). Player consents to the use of Player's name, voice, approved (as set forth in the Rider) likeness (actual or simulated, in character only or in or from the Promotional Footage) and approved (as set forth in the Rider) biography in merchandising. For merchandise that includes Player, Fox shall pay Player  of

Merchandising Net Receipts (the definition of which shall be subject to good faith negotiation within Fox's usual parameters for persons of Player's stature in the television industry at the time of this Agreement) reducible, on a dollar-for-dollar basis, to [redacted] of Merchandising Net Receipts if Fox is obligated to make payments to other royalty-receiving Series regulars in connection with the same merchandising item.

EXCLUSIVITY: Maximum required by the applicable Licensee as permitted by SAG in television and series programming. Player warrants that Player has no outstanding commitments which will materially interfere with the complete performance of all of Player's obligations nor shall Player enter into any commitment which materially conflicts or interferes with Player's obligations to Fox (which shall at all times be in first position) or with any rights granted to Fox pursuant to this Agreement. Player shall give Fox reasonable advance notice of any and all legal obligations of Player mandated by federal, state or local authority (e.g., jury duty) which might interfere with Player's services hereunder. In the event of any such obligation, Player shall cooperate fully with Fox in taking such action as Fox deem necessary to reschedule the obligation. Player's services shall be exclusive in television and series programming, subject to the following: Provided Player is not in material default and subject to Licensee approval with respect to Player's services in connection with U.S. commercials (which Fox shall make reasonable, good-faith efforts to obtain), Player may render unlimited non-identifiable voice over services, make U.S. and non-U.S. telecast commercials (including, without limitation, infomercials), make radio, talk, game, news, panel and award show guest (non-host, non-recurring) appearances and up to 3 other series guest appearances (including MOVs and mini-series if not longer than 6 telecast hours in the aggregate) during each 13-week period; provided any of such permitted services or appearances are not in the Role or as a character substantially similar to the Role, are not in a role which is a continuing role, are not during production periods, are not on programs known at the time such engagement is accepted by Player to be scheduled to be telecast or otherwise exhibited during the premiere week of the Series, at any time prior to November 15th in any Series Contract Year, during so called "sweeps" periods or during the regularly scheduled first run telecast time period of the Series, and, are not on a program which, to the best of Player's knowledge, has as any sponsor, a sponsor whose products are a competitor with any product of a major sponsor of the Series (Player shall use reasonable efforts to obtain such program telecast information and inform Fox in a timely manner). "Major sponsor" (as used herein) shall be defined in accordance with the definition set forth in Fox's licensing agreement with the Licensee.

PUBLICITY & RELATED SERVICES: For each Contract Year for which Fox exercises or intends to exercise its Series option Player will: (1) render services in connection with standard openings, closings, lead-ins, lead-outs, Series and episodic trailers, behind-scene shots, on-set interviews promotional films, and other enhanced or added value material and promotional footage (collectively, "Promotional Footage") for no additional compensation, which services shall be subject to Player's professional availability outside production periods (with respect to behind the scenes shots, on-set interviews and the other promotional footage set forth above, Fox shall not use footage which shows Player in an embarrassing or derogatory light); (2) make not less than, as Fox may request, five promotional and institutional non-performing Series-related appearances per each Contract Year for non-paying audiences (including, at Fox's election and without limitation, the Television Critics Association Press Tour in July and January and the May up-front presentations in New York and International screenings in L.A.) for no additional compensation; and (3) do the Licensee's still photo gallery shoot, the Licensee's "on-air" image campaign, the Licensee's satellite press tour and such other publicity and related services as Fox or the Licensee may require in connection with the Series for no additional compensation; and (4) make such other promotional appearances and participate in such other promotional efforts for the Series as Fox may reasonably require, it being understood and agreed that Player's participation in such efforts is a material provision of Player's engagement hereunder. Player may occasionally decline individual promotional appearances (except for those specifically set forth in (1), (2) and (3)) that conflict with Player's other obligations provided that Player renders a reasonable number of additional promotional appearances each Contract Year. Except with respect to Player's services (if and as required) for the TCAS, the Up-Fronts, and in the month preceding the Series season premieres, Player's services under subparagraphs (1), (2), (3) and (4) above shall be subject to Player's professional availability outside of production periods. If Player is required to travel in connection with the foregoing services, Fox will provide/reimburse such first-class travel, first-class accommodations, and expenses as required by SAG; provided that Fox shall use reasonable efforts to ensure that, on an "if available" and "if used" basis, Player's travel, accommodations and expenses in connection with an occurrence for which Player renders the foregoing services are substantially similar to the travel, accommodations and expenses provided by Fox to any other Series regular actor in connection with the same occurrence..

CONSENTS: Player consents to the use of Player's name, voice, likeness (actual or simulated, in character only or in or from the Promotional Footage, subject, with respect to publicity and promotional uses, to Player's approval rights as set forth in the Rider) and biography (subject, with respect to publicity and promotional uses, to Player's approval rights as set forth in the Rider), with no additional compensation to Player (unless otherwise specified herein or in the Soundtrack Album Agreement), in any and all media now known or hereafter developed, throughout the universe and in perpetuity, in connection with (1) the exploitation of the Series or elements thereof; (2) any ancillary and subsidiary uses of the Series or elements thereof; (3) the advertising, promotion and marketing of the Series or elements thereof; (4) the "institutional" advertising of Fox, its affiliated companies and its licensees; (5) the advertising of products or services of Fox's and its Licensee's commercial sponsors (including, without limitation, commercial tie-ins, product placement and point-of-purchase campaigns), provided that such advertising occurs in conjunction with the publicizing, promotion, production or distribution of the Series or elements thereof and does not constitute a direct endorsement of such product or service; (6) computer, Internet, CD Rom, DVD, BD-ROM, Blu-ray and other high definition formats, replay, games, interactive, wireless applications, and other "new media" exploitation, and e-commerce related to the Series or elements thereof; (7) literary and music publishing related to the Series and elements thereof; and (8) sound recordings and jacket covers (whether or not Player's performance is contained therein) related to the Series or elements thereof. Should Fox request Player's additional services beyond those required hereunder (including, without limitation, in connection with television commercial advertising), Fox and Player will negotiate in good faith with respect to Player's compensation for such additional services as, when and to the extent required by SAG. For purposes of this Paragraph, "or elements thereof" shall include, without limitation, the use of Promotional Footage.

LAWS: Player agrees that the state and federal courts in Los Angeles County, California will have personal jurisdiction over Player, and will be the exclusive forum for any lawsuits arising out of this Agreement, and that California law (as governs contracts entered into and fully performed in California) will apply. If any provisions hereof are contrary to law, they will be modified to conform. Player will abide by "anti-payola" requirements.

PRODUCER'S REMEDIES: Fox will have all rights available at law, equity and under SAG for Player's incapacity, default, material breach or if Fox's normal production operations are materially hampered or otherwise materially interfered with by reason of any disruptive events (including, but not limited to, a labor dispute). In such event, the Minimum Number for the applicable Contract Year may be reduced at Fox's sole election by 1 for each episode for which production is not commenced or completed due to said event to not less than 7. Player acknowledges that the services and the rights herein granted are of a special, unique, unusual, extraordinary and intellectual character giving them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages, and that Player's default or material breach will cause Fox irreparable injury and damage. If Fox in its good faith discretion believes that Player may fail or refuse to perform hereunder, Fox may require written assurance of Player's intent to perform the requested services. If Fox does not receive such assurance within 24 hours (or less, if production exigencies exist), then Player is in default and Fox reserves its rights and remedies pursuant to this agreement, at law and in equity. Player agrees that Fox shall be entitled to seek injunctive and other equitable relief if Player commits or threatens to commit a default or otherwise threatens to materially breach this Agreement. Fox may at any time, without legal justification or excuse, elect not to use Player's services or to have any further obligations to Player except any continuing obligations by Fox to insure and indemnify Player as set forth hereinafter, to pay residuals required by SAG, to accord Player credit on each Series episode in which Player recognizably appears, and to pay Player the Episodic Compensation with respect to the applicable employment period or Contract Year for which Fox has exercised its option. If Fox elects not to use Player's services as set forth in the preceding sentence, then any compensation earned by Player in the television industry during the period that Fox could have required Player to render services under this Agreement shall reduce Fox's


obligation to pay Player compensation hereunder, and Player shall immediately notify Fox in writing of any such compensation earned by Player in the television industry.

SPECIAL PROVISIONS: This agreement shall be governed by either the SAG or AFTRA collective bargaining agreement as determined by Fox in its sole discretion. In that regard, the parties acknowledge that Fox may elect to have the AFTRA Code be applicable in lieu of the SAG Agreement, in which case references herein to SAG shall refer to AFTRA. In connection therewith, Player recognizes that certain rights granted under the SAG Agreement must be specifically consented to under AFTRA and, accordingly, Player consents to exhibition of the Series in Supplemental Markets, use of excerpts containing Player's performances for minimum AFTRA program fees pursuant to Paragraphs 73.(d)(2), 73(d)(8) and 73(d)(10) of the Network TV Code, and crediting of Player's over-scale compensation against overtime, rest time, overall production and work time to the maximum extent permitted under Paragraph 56 of the Network TV Code or pursuant to AFTRA Exhibit "A" (as applicable); and Player further consents to the use of any Series excerpt containing Player's performance to the full extent permitted under the AFTRA Agreement, at the applicable minimum fee, if any, set forth therein for each such use. This Agreement shall be effective for all purposes as a binding agreement. Player warrants and represents that Player is and shall during the term of this Agreement continue to be a member in good standing of all applicable collective bargaining units having jurisdiction over Player's services under this Agreement. Player's services hereunder shall be pursuant to Licensee requirements, conducted at all times by Player in a professional manner, and performed consistent with Fox's reasonable (except as to creative matters as to which no "reasonable" qualifier shall apply) directions, practices and policies that reasonably relate to the services being provided. Personal photography of cast, crew or the sets (and the posting of any such photographs) is strictly prohibited without the prior written permission of Fox's publicity department. Incorporated in this Agreement by reference are Fox's Standard Terms (including the definition of "Merchandising Net Receipts") which shall be subject only to such changes thereto as may be mutually agreed upon in writing following good faith negotiation within Fox's usual parameters for persons of Player's stature within the television industry as of the date of this agreement. In the event of a conflict between the Agreement and attached Rider, on the one hand, and the Standard Terms, on the other hand, the Agreement and attached Rider will control. All of Fox's obligations are expressly conditioned upon Player's completion to Fox's satisfaction of Employment Eligibility Verification Form I-9.

NOTICES: All written notices from Fox to Player may be given by mail (effective upon mailing), by messenger, overnight delivery or fax and/or e-mail transmission and shall be sent to the address and/or e-mail address and/or fax number (as applicable) set forth below. Fax, e-mail, overnight or messengered delivery will be effective on the calendar date sent. Any notice date which is a non-business day (i.e., Saturday, Sunday or industry holiday), or any notice period which expires on a non-business day, shall be automatically extended to the next business day.


This Agreement (including the Rider attached hereto and incorporated herein by this reference) constitutes the entire understanding between the parties concerning the subject matter hereof and shall not be modified or amended except by the written agreement of the parties. In the event of a conflict between this Principal Agreement and the Rider, the Rider shall control.

AGREED:



EMILY DESCHANEL ("Player")

SNOOKER DOODLE PRODUCTIONS, INC. ("Lender")

By: 

Title: _____

TWENTIETH CENTURY FOX TELEVISION,
a unit of TWENTIETH CENTURY FOX FILM CORP.
P.O. Box 900, Beverly Hills, CA 90213
Attn: Legal Department; Fax 310.369.1872

By: 

Its: Samuel Bramhall
Sr. Vice-President, Business Affairs

Player's Agent and Address: _____

Rhonda Price _____

The Gersh Agency _____

41 Madison Avenue, 33rd Floor _____

New York, New York 10010 _____

212.634.8139 425.675.4444
(Phone) (Fax)

e-mail: rprice@gershny.com _____

cc: Adam Kaller, Esq.
Hansen, Jacobson, Teller, Hoberman,
Newman, Warren, Richman, Rush & Kaller, LLP
450 N. Roxbury Drive, 8th Floor
Beverly Hills, California 90210-4222
Phone: 310.248.3154; Fax: 310.550.5525
e-mail: ak@hjh.com

**RIDER TO THE AGREEMENT FOR SERIES SERVICES WITH OPTIONS
DATED AS OF DECEMBER 24, 2012
BETWEEN TWENTIETH CENTURY FOX TELEVISION AND
SNOOKER DOODLE PRODUCTIONS, INC. f/s/o EMILY DESCHANEL**

Producer Credit: Subject to network/licensee approval (approval by FBC is hereby acknowledged) and subject to Fox exercising the applicable option, for each Series episode produced and broadcast for which Player has completed all material services commencing with the first original episode for which final credits are submitted following full signature of this Agreement by Lender and Artist, Fox shall accord Player "Producer" credit on a separate card, in the main, opening or end titles wherever other producer credits appear (excluding the credits to any showrunners or Barry Josephson), in the same size, style and duration as other producer credits accorded in connection with the Series, excluding the credits accorded any showrunners and/or Barry Josephson. Except as expressly stated above, all characteristics of Player's credit will be determined by Fox. Any failure to accord Player credit will not be considered a breach of this Agreement and will not entitle Player to terminate this Agreement or seek injunctive relief. Upon written notice from Player, Fox will make reasonable efforts to correct future copies of the applicable episode for any credit error that may occur.

Dressing Room: While Player is rendering services hereunder, Fox shall provide Player with a private, exclusive (during production periods), first class dressing room, which, if not a stage dressing room, shall be no less than a star wagon and which shall include customary first class amenities such as TV, VCR, sofa, bathroom, heat/air conditioner, microwave, and, provided a hard line exists, a phone (Player to pay all long-distance and toll charges - no cell phones), as are available at the particular production facility/site. Such dressing room and amenities shall be substantially similar to the dressing rooms and amenities provided to other Series regulars.

Parking: During production periods for which Player is engaged, Fox will provide Player with parking for one car, either by an assigned parking space on the Fox lot (or the primary production location, if the Series is moved from the Fox lot) in reasonable proximity to the stage or by providing someone to park Player's car for them.

Contingent Compensation:

MAGR: Instead of any MAGR granted under the Prior Agreement, with respect to the Series produced hereunder and subject to full signature and Lender's and Player's complete performance of all of the material terms and conditions of this Agreement, Lender shall be entitled to receive an amount equal to 1% of 100% of the MAGR derived from the Series (Fox acknowledges this amount is fully vested upon signature of this Agreement by Lender and Artist).

Second Contract Year: Subject to full signature of this Agreement and Lender's and Player's continuing complete performance of all of the material terms and conditions of this Agreement, Lender shall be entitled to receive an amount equal to an additional [REDACTED] of the MAGR derived from the Series, vesting on a pro rata basis based on the number of episodes produced for the Second Contract Year for which Player completes all material services. In the event a Participation Statement is issued to Lender during the Second Contract Year, such statement shall reflect Lender's vested MAGR for the applicable Statement Period.

Third Contract Year: Upon Fox's exercise of its option for Player's services for the Third Contract Year (Tenth Series season), and subject to Lender's and Player's continuing complete performance of all of the material terms and conditions of this Agreement, Lender shall be entitled to receive an amount equal to an additional [REDACTED] of the MAGR derived from the Series, vesting on a pro rata basis based on the number of episodes produced for the Third Contract Year for which Player completes all material services. In the event a Participation Statement is issued to Lender during the Third Contract Year, such statement shall reflect Lender's vested MAGR for the applicable Statement Period.

Definition: Lender's MAGR shall be computed, determined and paid pursuant to Fox's Television Definition of MAGR (with, on a **CONFIDENTIAL, NON-PRECEDENTIAL AND NON-CITEABLE BASIS** a [REDACTED] Television Distribution Fee and a [REDACTED] Fox Administrative Charge, applicable to the entirety of Lender's share of

MAGR). The Television Distribution Fee will not be charged with respect to Gross Receipts derived from the initial network license or any extensions or renewals thereof. In the event that Fox enters into an agreement with a network for the renewal of a Series following the expiration of the initial network license ("Network Renewal") and such Network Renewal provides for the network to pay to Fox, prospectively, payments in excess of the pattern budget for such additional seasons of the Series ("Premium License Fee"), then Fox shall charge the Television Distribution Fee on the amount by which the Premium License Fee exceeds the pattern budget. The remainder of the MAGR definition shall be Fox's standard MAGR definition, subject only to those changes as may be mutually agreed upon in writing following good faith negotiation within Fox's customary parameters for persons of Player's stature as of the date of this agreement, but said definition shall include, among other things, the following:

Production Charges shall include all direct and directly allocable costs of production. Distribution Expenses shall include actual, direct or directly allocable costs.

Series will not be cross-collateralized except that a Series may be cross-collateralized with a Pilot(s) and/or Presentation(s) on which it is based.

The Fox Financing Charge shall be [REDACTED] There shall be no Fox Administrative Charge charged on Fox Financing Charge or Fox Financing Charge on Fox Administrative Charge or Fox Financing Charge on Fox Financing Charge; provided, however, Fox Financing Charge shall be treated as a recoupable item.

Production Charges will not include any third-party contingent compensation (excluding only fixed amount bonuses and royalties), advances or deferrals payable out of or measured by MAGR, net proceeds or other contingent compensation definition or calculation.

"Back-end" agency commissions (i.e., percentages of contingent compensation or deferments payable out of contingent compensation) will be deducted in the same manner as Distribution Expenses and will not otherwise reduce Lender's contingent compensation hereunder; and "front-end" agency commissions (i.e., percentages of license fee) will be deducted as items of Production Charges.

In the event a Fox affiliate distributes the Series, Fox will not charge a distribution fee in excess of the Fox Distribution Fees.

DISTRIBUTION CONTROLS:

General: Fox shall have complete, exclusive and unqualified discretion and control as to the time, manner, and terms of its distribution, exhibition and exploitation of each Series episode or aspects thereof, separately or in connection with other programs, in accordance with such policies, terms and conditions and through such parties as Fox in its business judgment may in good faith determine are consistent with business policy and proper or expedient and the decision of Fox in all such matters shall be binding and conclusive upon Lender and Player. Notwithstanding the foregoing, Fox shall accord good faith (meaningful) consultation to Player with respect to the initial domestic off-network sales plan, subject to the reasonable availability and reasonable response time of Player. Fox makes no express or implied warranty or representation as to the manner or extent of any distribution or exploitation of each Series episode nor the amount of money to be derived from the distribution, exhibition and exploitation of each Series episode, nor as to any maximum or minimum amount of such monies to be expended in connection therewith. Fox does not guarantee the performance by any Subdistributor, licensee or exhibitor, of any contract regarding the distribution and exploitation of each Series episode.

Dealings with Affiliates: Each of Lender and Player acknowledges that Fox is part of a diversified, multi-faceted, international company, whose affiliates include, or may in the future include, among others, exhibitors, television "platforms", networks, stations and programming services, video device distributors, record companies, internet companies, so called "E.Commerce companies", publishers (literary and electronic) and wholesale and retail outlets (individually or collectively, "Affiliated Company or Companies"). Each of Lender and Player further acknowledges that Fox has informed Lender and Player that Fox intends to make use of Affiliated Companies in connection with its distribution and exploitation of the Series episodes, as, when and where Fox deems it appropriate to do so. Each of Lender and Player expressly waives any right to object to such distribution and exploitation of any Series episode (or aspects thereof) or assert any claim that Fox should have offered the applicable distribution/exploitation rights to unaffiliated third parties (in lieu of, or in addition to, offering the same to Affiliated Companies). In consideration thereof, Fox agrees that Fox's transactions with Affiliated Companies will be on monetary terms comparable to the terms on which the Affiliated Company enters into similar transactions with unrelated third party distributors for comparable programs. Each of Lender and Player agrees that Lender's and/or

Player's sole remedy against Fox for any alleged failure by Fox to comply with the terms of this paragraph shall be actual damages, and each of Lender and Player hereby waives any right to seek or obtain preliminary or permanent equitable relief or punitive relief in connection with any such alleged failure.

Reference:

a. Any claims, disputes, disagreements or other matters in question arising out of or relating to Fox's distribution of the Series ("Claim") shall be submitted to a general, non-jury reference ("Referee") to hear and decide all matters relating to the Claim pursuant to California Code of Civil Procedure Sec. 638 ("638 Reference"). Without limiting the foregoing, if for any reason any cause of action asserted as part of a Claim, or the entire Claim, is not capable of being decided by means of a 638 Reference, then the parties agree to have that cause of action resolved by means of binding arbitration in Los Angeles County, California before a single, neutral arbitrator with experience handling entertainment industry matters who is a former or retired judge of any California State or Federal Court under the JAMS Comprehensive Arbitration Rules and Procedures, including Rules 16.1 and 16.2, and the parties further elect the JAMS Optional Arbitration Appeal Procedures with respect to any resulting arbitration judgment or award (collectively, the "JAMS Rules"). The parties agree that any issue or dispute involving the interpretation of this Agreement, or any issue or dispute as to whether a particular Claim is subject to this Reference provision, shall be determined by the Referee (or Arbitrator) selected as provided for below. For avoidance of doubt, the parties note their intent that any cause of action or dispute requiring interpretation of this Agreement, regardless of whether based on State or Federal law, and any proceedings on remand or following a reversal or grant of a new trial, shall be considered a Claim subject to these Reference provisions. The parties further agree that the Referee (or Arbitrator) shall follow the California Rules of Evidence except as otherwise provided herein, and the Reference Trial (or Arbitration) and any depositions shall be transcribed, with the transcription costs borne equally by each side. The Referee (or Arbitrator) shall provide a written decision, which shall include a written statement of reasoning for the decision. In connection with any proceeding under this provision, the parties agree to take reasonable efforts, consistent with all applicable laws, rules and regulations, to preserve the confidentiality of information, documents, testimony and proceedings that relate to a Claim.

b. In the event a party refuses to participate in a 638 Reference (or Arbitration) as provided for herein, the party seeking to enforce the 638 Reference (or Arbitration) may do so by filing an action to enforce this dispute resolution provision. If any lawsuit is filed asserting a Claim, the parties intend and agree that the State or Federal Court where that action is filed shall be authorized to enforce this dispute resolution provision, and a party seeking to enforce this provision may file a motion for enforcement in lieu of a responsive pleading. Where the matters falling within this provision involve federal law issues that otherwise could only be heard in federal court, the motion to enforce the reference shall be brought in federal court.

c. The Referee's (or Arbitrator's) fees and expenses shall be paid by the losing party, but each party shall bear its own attorneys' fees and related costs except as otherwise provided for by law. The Referee shall be selected by mutual agreement between the parties, but if the parties cannot agree upon a Referee within 5 business days of a written request therefore, then within 10 business days of the written request, each side shall exchange its own list of four retired Judges of the California state or federal courts whom it wishes to nominate as potential Referees and shall rank the potential Referees by number in order of preference (in descending order, assigning "1" to the lowest choice). If any name appears on both lists, that Judge shall act as Referee. If there is more than one match, the Judge with the highest combined ranking shall serve as Referee. If there are no matches, then each side has the option to veto one name from the other side's list, and shall rank the remaining potential Referees by number in order of that side's preference (in descending order, assigning "1" to the lowest choice). The lists shall be exchanged and the single Judge with the highest combined rating shall serve as Referee. In the event of a tie, the names of the tied Judges shall be placed in a hat and one name will be drawn to serve as Referee. If the highest-rated or agreed-upon Judge declines to serve or becomes unable to serve after selection, then the procedures set forth above shall be repeated to select a new Referee. Prior to the appointment of the Referee (or Arbitrator), any party may seek provisional remedies or preliminary injunctive relief not otherwise prohibited by this Agreement in a court of competent jurisdiction without thereby waiving its rights under this Paragraph. Arbitrators shall be selected as provided in the JAMS Rules subject to the qualifications set forth in a.

Domestic Photo/Likeness/Biography Approval: With respect to Fox's use of Player's likeness and biography (and Fox's provision of Fox-generated materials to the network licensee) in connection with the publicity and promotion of the Pilot/Series and/or elements thereof, Player shall have the following rights of approval, such approval not to be unreasonably or untimely withheld:

- a. **Still Photographs:** Still photography taken and distributed by Fox in which Player's likeness appears, provided that Player must approve: (i) 50% of all still photographs from each Pilot and Series episode submitted to Player in reasonable quantities in which Player appears alone; or (ii) 75% of all still photographs from each Pilot and Series episode submitted to Player in reasonable quantities in which Player appears with others. Still photographs taken directly from copies of the Pilot or episode of the Series delivered to the Licensee of the Series are hereby pre-approved.
- b. **Non-Photographic Likeness:** All non-photographic likenesses provided that Player provides Fox specific written objections in writing. If disapproved non-photographic likenesses are redrawn to meet Player's specific written objections, Player shall have a right of reasonable approval with respect to such redrawn non-photographic likenesses. If, after 1 redrawn non-photographic likeness, Player has not approved such likeness, Player may elect to have the non-photographic likeness redrawn, at Player's own expense, by an artist approved by Fox; provided that such redrawing can be completed within the time guidelines reasonably specified by Fox. If Player elects not to have the non-photographic likeness redrawn, Fox will select one of the existing likenesses, excluding the first such likeness.
- c. **Biographical Data:** Player's biographical data released by Fox, provided that Player gives Fox specific written objections to any disapproved biographical data.
- d. **Domestic Application Only:** All of the foregoing shall apply only to still photographs, non-photographic likenesses, and biographical data of Player that are intended for use in connection with the U.S. telecast or distribution of the Pilot and/or Series.
- e. **Time Limitations:** Player must approve the applicable percentage of each group of still photographs, each non-photographic likeness, and all biographical data within 3 business days of Fox's submission to Player or 2 business days with respect to material in which Player's still photograph, non-photographic likeness, or biographical data appears with others. Failure to disapprove any of the foregoing within such time period (or shorter period in the case of publication and/or media deadlines) will be deemed approval of the submitted material.

Paid Ads: Subject to Fox's customary "Excluded Ads" (e.g., awards, nomination, congratulatory ads and the like in which only the honoree is mentioned, group ads, teasers, etc.), Fox shall accord Player credit in all paid ads issued by Fox or under its control in connection with the Series in which any other Series regular actor is accorded credit; if any Series regular actor, other than the nominee, award recipient, or subject of the congratulatory ad, is included in the Excluded Ad, Player also shall be accorded credit in such Excluded Ad. If Fox fails to comply with any paid ad provision of the Agreement, Fox agrees, upon written notice from Player which specifies such failure to comply, to take such steps as are reasonably practicable to cure such failure with respect to future paid ads.

Hair/Make-up/Wardrobe: Subject to applicable union guidelines and budgetary limitations, while Player is rendering Series services hereunder, Fox shall consult with Player regarding Player's hair, make-up, and wardrobe.

Series Payment: If Fox exercises its option for Player's Series services for a Contract Year, Fox shall commence Lender's episodic payments no later than October 1st of the applicable year, regardless of whether actual production of the Series has begun, subject to Fox's rights under the Agreement in the event of Lender's or Player's incapacity or default, or production interruption due to labor disputes and/or causes beyond Fox's control.

Worker's Compensation: Player's services hereunder shall be subject to all applicable workers' compensation statutes of the United States.

Assignment and Lending: The Agreement is non-assignable by Lender or Player except to an entity owned and controlled by Player and which has the exclusive right to furnish Player's services provided for in the Agreement, provided, however, that such assignment must be made prior to commencement of services for the First or subsequent applicable Contract Years, and shall be effective with respect to the then upcoming and subsequent Contract Years. The Agreement shall inure to the benefit of Fox's successors, assignees, licensees and grantees and associated, affiliated and subsidiary companies, and Fox and any subsequent assignee may freely assign the Agreement, in whole or in part, to any party; provided, however, that Fox shall remain secondarily liable thereunder unless said assignment is to an entity affiliated with, owned or controlled by or owning or controlling Fox, or which succeeds to substantially all of the assets of Fox, or to a major or so-called "mini-major" production or distribution company, or to a network, or to a similarly financially responsible entity, which assumes all of Fox's obligations hereunder in writing. Fox shall have the right to lend Player's services hereunder to any subsidiary or affiliated entities, or any motion picture production entity, provided such production entity shall have granted to Fox the right to distribute the Series. No such lending of Player's services shall relieve Fox of its obligations hereunder.

Insurance: Lender and Player shall be insured by Fox's errors and omissions and general liability insurance policies for the Series to the extent that Fox obtains and maintains such policies, subject to the terms, conditions and restrictions of such policies and endorsements thereto.

Consents Exclusions: Fox agrees not to use Player's name, voice or likeness in connection with the merchandising of, or commercial tie-ins to, gambling, religious or political advertising, alcohol, tobacco, firearms (including toy versions), drugs (prescription or otherwise), nutritional supplements, vitamins, products related to sexual activity, undergarments or feminine or personal hygiene products.

Indemnification:

- a. **By Lender and Player:** Each of Lender and Player agrees to indemnify and hold harmless Fox, its subsidiaries, affiliates, parents and its and their successors, assigns, licensees, officers, directors and employees, from and against any and all third party claims, liabilities, losses, damages, costs, expenses (including reasonable outside attorneys' fees), judgments and penalties arising out of, resulting from, based upon or incurred because of (i) the breach by Lender and/or Player of any agreement or warranty made by Lender and/or Player hereunder and (ii) any gross negligence, intentionally tortious or reckless acts or omissions committed by Lender and/or Player while providing Series services (except for negligence, excluding gross negligence as set forth above, or as otherwise required by law or matters set forth in subparagraphs b. (i) and b.(ii) below).
- b. **By Fox:** Fox agrees to indemnify, defend and hold harmless Lender and Player from and against any and all third party claims, liability, losses, damages, costs, expenses (including reasonable outside attorneys' fees), judgments and penalties arising out of, resulting from, based upon or incurred because of: (i) the addition, subtraction or alteration by Fox of any results and proceeds of Lender's and/or Player's services; (ii) materials specifically furnished by Fox for use by Lender and/or Player hereunder; and (iii) the development, production, distribution, and/or exploitation of the Series and/or elements thereof, except with respect to matters for which Lender and/or Player indemnifies Fox.


Guild/Pension, Health & Welfare: Fox shall make all required guild pension, health and welfare contributions directly to the applicable guild. There shall be no crediting of "overscale" compensation against residuals and vice-versa.

SOUNDBRACK ALBUM AGREEMENT
As of December 26, 2012

Twentieth Century Fox Television ("Fox") shall own the phonorecord masters relating to the Pilot and Series referred to in that certain Agreement (the "Agreement") dated as of December 24, 2012 between Snooker Doodle Productions, Inc. ("Lender") f/s/o Emily Deschanel ("Player") and Fox. Fox shall have the right to rerecord and/or re-use Player's voice and performances for use in Soundtrack Records, provided that Fox's rights shall be limited to using Player's voice and performance from and/or in connection with the Pilot and/or Series. The royalty to be paid to Lender in connection with the issuance of a Soundtrack Record using Player's voice shall be [REDACTED] of the suggested retail list price of such Soundtrack Record, calculated, computed and paid in all respects in accordance with the Agreement between Fox and the record company distributing such Soundtrack Record. The royalty shall be reduced (pro rata) by the number of royalty bearing masters contained on the Soundtrack Record and if one or more additional artist/record producers are entitled to a royalty in connection with the exploitation of a master recording in which Player's voice is embodied, then the royalty shall be further reduced (pro rata) by the total number of such artists/record producers on such master. Neither Lender nor Player shall be entitled to any other compensation in connection with such use, excepting only minimum required applicable guild or union payments, if any.

AGREED:

TWENTIETH CENTURY FOX TELEVISION,
a unit of TWENTIETH CENTURY FOX FILM CORP.
P.O. Box 900, Beverly Hills, CA 90213
Attn: Legal Department; Fax 310.369.1872



Emily Deschanel ("Player")

By: 

Samuel Bramhall
Its: Senior Vice President, Business Affairs

Snooker Doodle Productions, Inc. ("Lender")

By: 

Title: _____

Player's Agent and Address:

Rhonda Price

The Gersh Agency

41 Madison Avenue, 33rd Floor

New York, New York 10010

212.634.8139
(Phone)

425.675.4444
(Fax)

e-mail: rprice@gershny.com

cc:

Adam Kaller, Esq.
Hansen, Jacobson, Teller, Hoberman,
Newman, Warren, Richman, Rush & Kaller, LLP
450 N. Roxbury Drive, 8th Floor
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Phone: 310.248.3154; Fax: 310.550.5525
e-mail: ak@hjth.com

Exhibit 8

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 04/08/16

DEPT. 17

HONORABLE Richard E. Rico

JUDGE A. ORTIZ

DEPUTY CLERK

HONORABLE
21

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

C. ELLIS, C.A.

Deputy Sheriff

NONE

Reporter

8:30 am BC602287

Plaintiff
Counsel

NO APPEARANCES

WARK ENTERTAINMENT INC

VS

Defendant
Counsel

TWENTIETH CENTURY FOX FILM CORP

R/W BC602548

NATURE OF PROCEEDINGS:

RULING ON SUBMITTED MATTER

The Court, having previously taken the matter under submission on 04/04/16, issues its ruling in consisting of 10 pages, filed this date and incorporated herein by reference to the Court file.

Summary of the court's Ruling:

...The motion to compel arbitration is GRANTED and stayed as to the non-arbitrable claims as mentioned above.

The status conference date previously set for May 4, 2016 is taken off calendar and a new status conference re arbitration is set for October 3, 2016 as 8:30 a.m. in this court to allow the parties to commence arbitration pursuant to the court's ruling.

A true copy of this minute order and the Court's ruling are mailed to counsel through U.S. Mail.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 04/08/16

DEPT. 17

HONORABLE Richard E. Rico

JUDGE A. ORTIZ

DEPUTY CLERK

HONORABLE
21

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

C. ELLIS, C.A.

Deputy Sheriff

NONE

Reporter

8:30 am BC602287

Plaintiff
Counsel

NO APPEARANCES

WARK ENTERTAINMENT INC

VS

Defendant
Counsel

TWENTIETH CENTURY FOX FILM CORP

R/W BC602548

NATURE OF PROCEEDINGS:

not a party to the cause herein, and that on this date I served the minute order dated 4/8/16 and the court's ruling.
upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: 4/12/16

Sherri R. Carter, Executive Officer/Clerk

By:

A. ORTIZ

JOHN BERLINSKI
KASOWITZ, BENSON, TORES & FRIEDMAN, LLP
2029 CENTURY PARTK EAST, SUITE 750
LOS ANGELES. CA. 90067

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 04/08/16

DEPT. 17

HONORABLE Richard E. Rico

JUDGE

A. ORTIZ

DEPUTY CLERK

HONORABLE
21

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

C. ELLIS, C.A.

Deputy Sheriff

NONE

Reporter

8:30 am BC602287

Plaintiff
Counsel

WARK ENTERTAINMENT INC

NO APPEARANCES

VS

Defendant

TWENTIETH CENTURY FOX FILM CORP

Counsel

R/W BC602548

NATURE OF PROCEEDINGS:

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APR 08 2016

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

Ruling

1

RULING

1 **I. MOTION TO COMPEL ARBITRATION—PLAINTIFF WARK**
2 **ENTERTAINMENT**

3 Wark Entertainment, Inc. f/s/o Barry Josephson (“Plaintiff”) brought the instant action
4 against Twentieth Century Fox Film Corporation; Fox Broadcasting Company; and Fox
5 Entertainment Group, Inc. (collectively, “Fox”).

6 This action arises from a 10/4/04 Agreement (“2004 Agreement”) between the parties.
7 Plaintiff, executive producer of the television series “Bones”, alleges that Fox is depriving
8 Plaintiff of its contractual entitlement to certain guaranteed compensation and contingent
9 compensation. In December 2010, Plaintiff engaged an accounting firm to audit Defendants’
10 books and recordings related to “Bones” from season one through seven. (Complaint ¶ 23.) The
11 audit was completed in May 2014 and Plaintiff now brings the instant action.

12 The Complaint alleges causes of action for 1) breach of contract; 2) breach of implied
13 covenant of good faith and fair dealing; 3) inducing breach of contract; 4) intentional
14 interference with contract; 5) unfair competition; 6) fraudulent inducement; 7) declaratory relief;
15 and 8) accounting.

16 In relevant part, the Complaint asserts three main categories of claims. The first category,
17 outlined in paragraph 25D in the complaint concern Defendants’ alleged failure to “make
18 transactions with affiliated entities on monetary terms comparable to the terms on which the
19 affiliated entities enter into similar transactions with unrelated third party distributors for
20 comparable programs” (the “Self-Dealing Claim”). (Complaint ¶ 25(D).) The second category
21 concerns calculations of contingency compensation based on Plaintiff’s Modified Adjusted
22 Gross Receipts (“MAGR”) (“Contingency Compensation Claim”) (Complaint ¶ 25(A)-(C).)
23 Finally, Plaintiff challenges the validity of the 2009 Release concerning Defendants’ license fee
24 for seasons 5 and 6 (the “2009 Release Claim”).

25 Fox moves to compel arbitration and stay the instant proceeding on the grounds that
26 various written agreement exists providing for arbitration of the controversies that may arise
27 between the parties. Specifically, Fox focuses on Paragraph 10, titled “Distribution Controls,”
28

1 within the 2004 Agreement. Subsection C mandates arbitration under the rules of JAMS for “any
2 dispute arising under the provisions of this Paragraph 10...” (Pomerantz Decl., Exh. 1 ¶ 10(c).)

3 As a threshold issue, Plaintiff argues that the 2004 Agreement was superseded and
4 trumped by a later 2008 MAGR Definition Document (“MAGR Definition”). (Fitzgerald Decl.,
5 Exh. D.) This argument is not persuasive and the MAGR Definition specifically provides that it
6 “form[s] a part of the Agreement” and references the 2004 Agreement. (Id. p.1.)

7
8 ***A. Self-Dealing Claims***

9 The Self-Dealing Claims are alleged in paragraphs 25(D)-(E) of the Complaint and form
10 the basis of parts of the first, second, third, fourth, fifth, seventh, and eight causes of action.

11 Defendant argues that these claims are encompassed within the 2004 Agreement’s
12 “Distribution Controls” paragraph. In fact, the Complaint directly quotes from the Distribution
13 Controls Paragraph. The former alleges that “Fox breached, and continues to breach, its
14 contractual obligation in the Agreement to make transactions with affiliated entities on *monetary*
15 *terms comparable to the terms on which the affiliated entities enter into similar transactions with*
16 *unrelated third party distributors for comparable programs*, which has resulted in artificially
17 deflated revenues reported on the participation statements.” (Complaint ¶ 25(D).) Distribution
18 Controls subsection b, entitled “Dealings with Affiliates” provides that “Fox agrees that Fox’s
19 transactions with Affiliated Companies will be *on the monetary terms comparable to the terms*
20 *on which the Affiliated Company enters into similar transactions with unrelated third party*
21 *distributors for comparable programs.*” ((Pomerantz Decl., Exh. 1 ¶ 10(b).)

22 In relevant part, Plaintiff’s opposition raises an estoppel argument. Plaintiff argues that
23 because Fox permitted Plaintiff to proceed with an audit of the Self-Dealing Claims, as provided
24 for under the MAGR Definition’s procedures, Fox acknowledged that the MAGR procedures
25 applies to all Plaintiff’s claims. (Oppo. pp. 8.) Nothing in the 2004 Agreement provides that
26 claims arise from the Distribution Controls Paragraph *only* is those claims were excluded from
27 an audit. Further, Plaintiff’s reliance on *Law Offices of Dixon R. Howell v. Valley* (2005) 129
28 Cal.App.4th 1076, is misguided and involved a situation wherein a client waived the right to

1 arbitrate an attorney fee dispute by waiting nearly fifteen months until six days before trial to
2 bring a motion to compel arbitration. Further, there is simply no showing that Fox engaged in
3 conduct inconsistent with the right to arbitrate.

4 The claims are arbitrable.

5
6 **B. *Contingent Compensation Claims***

7
8 The Contingent Compensation Claims are alleged in paragraph 25(A)-(C) of the
9 Complaint and form the basis of parts of the first, second, third, fourth, fifth, seventh, and eight
10 causes of action.

11 Fox argues that these claims also arise from the Distribution Controls Paragraph of the
12 2004 Agreement and are subject to arbitration. (Motion pp. 10-11.) In making this argument, Fox
13 points to subsection A, which confers discretion as to the “time, manner, and terms of its
14 distribution, exhibition, and exploitation of each Series episode...in accordance with such
15 policies, terms, and conditions and through such parties as Fox in its business judgment” chooses
16 to put in place and disclaims any warranty or representation as to “manner or extent of any
17 distribution or exploitation of each Series episode...” Fox argues that such language necessarily
18 protects Fox’s ability to exercise its business judgment as to how to market, distribute, and
19 monetize the series in accordance with the policies, including the MAGR definition, that it
20 decides to adopt and that any dispute that touches on those decisions falls within the Distribution
21 Controls Paragraph’s terms.

22 Plaintiff argues that Defendants’ interpretation of the Distribution Controls Paragraph is
23 too broad. As pointed out in the opposition, the bulk of these claims challenge Fox’s calculation
24 or reporting of Plaintiff’s contingent compensation under the 2004 Agreement Paragraph 6
25 entitled “Contingent Compensation” and the MAGR Definition; such claims do not challenge
26 Fox’s decision to broadcast the series on Fox. (Oppo. pp. 9-10.) Said differently, Fox’s reading
27 of the contract would mean that Fox’s discretion to market and distribute the Series includes the
28 ability to misclassify or misreport revenues and profits.

1 The claims are not arbitrable.

2 ***C. Unconscionability***

3
4 “Courts analyze the unconscionability standard in Civil Code section 1670.5 as invoking
5 elements of procedural and substantive unconscionability. The procedural element of
6 unconscionability focuses on whether the contract is one of adhesion. Procedural
7 unconscionability focuses on whether there is ‘oppression’ arising from an inequality of
8 bargaining power or ‘surprise’ arising from buried terms in a complex printed form. The
9 substantive element addresses the existence of overly harsh or one-sided terms. An agreement to
10 arbitrate is unenforceable only if both the procedural and substantive elements are satisfied.
11 However, Armendariz held, ‘[T]he more substantively oppressive the contract term, the less
12 evidence of procedural unconscionability is required to come to the conclusion that the term is
13 unenforceable, and vice versa.’ (Armendariz, at 114).” (*McManus v. CIBC World Markets Corp.*
14 (2003) 109 Cal. App. 4th 76, 87 (citations omitted).)

15 Plaintiff makes several arguments for procedural unconscionability. First, Plaintiff argues
16 that this was a “take it or leave it” contract of adhesion and he had no opportunity to negotiate
17 the terms of the Agreement. (Schenkman Decl. ¶¶ 9.). This argument is not persuasive and the
18 courts generally recognize that an adhesion contract is not dispositive and focus on the element
19 of surprise in conferring procedural unconscionability. (*Roman v. Superior Court* (2009) 172
20 Cal.App.4th 1462, 1470-1471.) Given the relative sophistication of both parties, surprise appears
21 limited.

22 Plaintiff also argues that the 2004 Agreement fails because it did not include the relevant
23 rules under the FAA. Similar argument has been specifically rejected by numerous courts. (See
24 *Peng v. First Republic Bank* (2013) 219 Cal. App. 4th 1462, 1472 “we find the failure to attach
25 the AAA rules, standing alone, is insufficient grounds to support a finding of procedural
26 unconscionability.”)

27 Finally, Plaintiff argues that substantive unconscionability is profound because arbitration
28 could only be brought against Plaintiff. Plaintiff’s argument misses. While *Armendariz* observed
that substantive unconscionability may manifest itself in the form of “an agreement requiring

1 arbitration only for the claims of the weaker party but a choice of forums for the claims of the
2 stronger party,” there is no similar showing of bargaining inequities here, let alone such one-
3 sidedness as to “shock the conscience”. (*Mercuro v. Superior Court* (2002) 96 Cal. App. 4th 167,
4 176-77.)

5 The 2004 Agreement is not unconscionable.

6 ***D. 2009 Release Claims***

7
8 The 2009 Release Claims forms part of the basis for the fifth and sixth causes of action
9 for unfair competition and fraudulent inducement. Plaintiff alleges the Defendants engaged in
10 unfair competition by:

11 Engaging in a wrongful pattern and practice of forcing profit participants to sign
12 releases setting the license fees for series produced by Fox and airing on Fox-
13 affiliated networks at unfairly low levels, thereby reducing the profits shared with
14 participants on those series. Defendants’ preferred technique is to fraudulently
15 threaten to cancel or not renew a series unless profit participants sign these
16 releases. Defendants engaged in this pattern and practice with respect to (at least)
17 *Bones* and, on information and belief, other series airing or that have aired on
18 Fox-affiliated networks.

19 (Complaint ¶ 54(B).)

20 Defendant argues that the Release Claims are similarly arbitrable because 1) they arise
21 from the Distribution Controls Paragraph because they touch on Fox’s dealings with affiliates;
22 and 2) Plaintiff separately agreed to arbitrate all his claims with respect to the 2009 Release.
23 ((Pomerantz Decl., Exh. 2 ¶ 4.)

24 ***E. Non-Contractual Claims & Fox Affiliates***

25 As noted above, the Self-Dealing Claims form, in part, the basis of Plaintiff’s non-
26 contractual claims for breach of implied covenant of good faith and fair dealing, inducing breach
27 of contract, intentional interference with contract, unfair competition, declaratory relief, and
28 accounting. Because the 2004 Arbitration Agreement applies to “any dispute arising under
Paragraph 10,” the Court finds that the provisions applies also his tort, statutory, and equitable

1 claims. (See *Bigler v. Harker School* (2013) 213 Cal.App.4th 727, 739 [“A long line of
2 California and federal cases holds that claims framed in tort are subject to contractual arbitration
3 provisions when they arise out of the contractual relationship between the parties....It is the
4 dispute, not the named cause of action, that is the focus of inquiry. Thus, that the complaint
5 alleges defamation and battery is in itself immaterial; what must be determined is whether the
6 tort claims have their roots in the relationship between the parties which was created by the
7 contract.”] (internal citations omitted).)

8
9 The court also finds that Plaintiff must arbitrate his claims against non-party affiliates
10 Fox Broadcasting Company (“FBC”) and Fox Entertainment Group, LLC (“FEG”). “Arbitration
11 is a matter of contract and therefore, ordinarily, someone not a party to the arbitration agreement
12 cannot be compelled to arbitrate...However, an arbitration agreement can be enforced against
13 certain nonsignatories under applicable principles of agency and contract law. (See *Gravillis v.*
14 *Coldwell Banker Residential Brokerage Co.* (2006) 143 Cal.App.4th 761, 772, 49 CR3d 531,
15 538, fn.3); Cal. Prac. Guide Alt. Disp. Res. Ch. 5-F.)

16 Case law provides that it may be compelled in similar corporate subsidiary situations
17 where the issues are inextricable intertwined. (*Sourcing Unlimited, Inc. v. Asimco Intl, Inc.*
18 (2008) 526 F3d 38, 40-42.) Here, the Self-Dealing claims against Fox TV are inextricably
19 intertwined with the claims against FBC and FEG. For example, the fourth cause of action for
20 intentional interference is brought against FBC and FEG and provides that, by virtue of
21 controlling Fox TV and FBC, FEG “pressured and purposefully caused, and are continuing to
22 force and induce, Fox to breach its contractual obligations to Plaintiff...Defendants [Fox TV,
23 FBC and FEG] collaborates and/or participated with Fox in the conduct described above because
24 these Defendants knew they would benefit from such conduct...” (Complaint ¶¶ 47-48.)

25
26 ***F. Stay Pending Resolution***
27
28

1 “[W]hen there is a severance of arbitrable from inarbitrable claims, the trial court has the
2 discretion to stay proceedings on the inarbitrable claims pending resolution of the arbitration.”

3 *Cruz v. PacifiCare Health Systems, Inc.* (2003) 30 Cal.4th 303, 320.

4 Under the circumstances, the court finds it is necessary to stay the Contingency
5 Compensation Claims. Both sets of claims necessary touch on the same MAGR pot and
6 calculations which will be used to determine the value in the pot.

7
8 **II. MOTION TO COMPEL ARBITRATION-- PLAINTIFFS TEMPERANCE**
9 **BRENNAN, ET AL:**

10 This related action is brought by Plaintiffs Temperance Brennan, L.P. f/s/o Kathleen
11 Reichs; Snooker Doodle Productions, Inc. f/s/o Emily Daschanel; and Bertha Blue, Inc. f/s/o
12 David Boreanaz.

13 The complaint alleges 1) breach of contract; 2) breach of implied good faith; 3)
14 fraudulent inducement; 4) fraudulent concealment; 5) inducing breach of contract; 6) intentional
15 interference with contract; 7) accounting; and declaratory relief.

16 In relevant part, Plaintiffs bring the same manner of Self-Dealing, Contingency
17 Compensation, and 2009 Release Claims, mandating equal treatment by the court. Moreover, the
18 subject agreements contain the same language regarding the Distribution Controls Paragraph
19 (including the subsection C arbitration provision) and that Contingent Compensation.
20 (Pomerantz Decl. Exh. 6 [“Reichs 2004 Agreement”] ¶ 13(c); Exh. 2 [“2005 Boreanaz
21 Agreement”] Rider at 3; Exh. 5 [“2008 Daschanel Agreement”] Rider at 3.)

22 As discussed above, allegations of “Improper Self-Dealings” within the Complaint
23 necessarily touch on the Distribution Controls Paragraph and the arbitration provision.
24 (Complaint ¶¶ 43-54.) Specifically, these allegations include “sweetheart” deals with
25 sister networks, affiliated foreign networks, new media licenses, and syndication deals
26 resulting in artificially low licensing deals. As noted in the Reply, the Distribution
27 Controls Paragraph is the *sole source* of the claims regarding Fox’s alleged obligation to
28 deal with Affiliated Companies on comparable terms to those on which unaffiliated

1 parties. Moreover, the later "Profit Definition" and "Actor Agreements" do relevant only
2 to the Contingency Compensation claims. (Berlinski Decl. ¶ 5, Exh. C, D-E.)

3 As to the 2009 Release Agreements, Plaintiffs concede that there is a governing
4 arbitration provision but argue that the inclusion of "may" renders it permissive. (Pomerantz
5 Decl. Exh. 1 ¶ 4.) Plaintiffs' argument is unsupported and courts have repeatedly rejected similar
6 arguments. *Ruiz v. Sysco Food Services* (2004) 122 Cal.App.4th 520, 523 is instructive:

7 Next, the trial court should not accept Ruiz's argument that there was no
8 mandatory agreement to arbitrate, due to the permissive "may" language in the
9 subject grievance process in the CBA. The CBA, article 14, sets forth the
10 definition of a grievance, equivalent to the definition of an arbitrable issue, as
11 follows: "[a] grievance shall include any difference of opinion or dispute between
12 the Employer and the Union or any employee covered by this Agreement
13 *regarding the interpretation of this Agreement.*" (Emphasis added.) Article 14 of
14 the CBA also provides: "[I]f a representative of the Employer and the Union
15 cannot settle a grievance as outlined above, the matter *may* be referred to
16 arbitration...." (Emphasis added.) These provisions in the CBA, read in context of
17 the entire agreement, do not provide an optional procedure, but rather set out a
18 mandatory arbitration provision that is properly subject to this motion to compel.
19 There has already been a termination-related grievance process and this is the next
20 phase of the dispute. Moreover, Ruiz's contention that there was no mandatory
21 agreement to arbitrate appears to be a new argument on appeal, which is not
22 appropriately addressed here. (*Mayhew v. Benninghoff* (1997) 53 Cal.App.4th
23 1365, 1372.)

24 Read in context, paragraph 4 provides for a three-step resolution process of negotiation,
25 mediation, and arbitration. Specifically, the paragraph provides, "[i]f, after efforts to mediate and
26 resolve outstanding issues, there remain unresolved issues, either Party may commence
27 arbitration proceedings in Los Angeles through binding arbitrations before a mutually selected
28 arbitrator..." (Pomerantz Decl. Exh. 1 ¶ 4.) A fair reading of this paragraph provides that a party

1 may or may not decide to proceed to arbitration. It does not provide that a party may decide to
2 proceed in court. The 2009 Release claims are arbitrable.

3 Further, as outlined above, the court finds that the arbitrable claims are inextricably
4 bound with the non-arbitrable claims, necessitating a stay. The motion to compel arbitration is
5 granted and stayed as to the non-arbitrable claims as mentioned above.

6 The status conference date previously set for May 4, 2016 is taken off calendar and a new
7 status conference re arbitration is set for October 3, 2016 at 8:30 am in this court to allow the
8 parties to commence arbitration pursuant to the court's ruling.

9 Clerk to give notice.

10 DATED: April 8, 2016

A handwritten signature in black ink, appearing to read 'Richard E. Rico', is written over a horizontal line.

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12
13 RICHARD E. RICO
14 Judge of the Superior Court
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Exhibit 9

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Attorneys for Claimants and Counter-
9 Respondents TWENTIETH CENTURY FOX
FILM CORPORATION; FOX
10 ENTERTAINMENT GROUP, LLC; TWENTY-
FIRST CENTURY FOX, INC.; FOX
11 BROADCASTING COMPANY

12 JAMS

13 LOS ANGELES, CALIFORNIA

14 TWENTIETH CENTURY FOX FILM
CORPORATION, a Delaware corporation;
15 FOX ENTERTAINMENT GROUP, LLC, a
Delaware limited liability corporation;
16 TWENTY-FIRST CENTURY FOX, INC., a
Delaware corporation; and FOX
17 BROADCASTING COMPANY, a Delaware
corporation,
18

19 Claimants,

20 vs.

21 WARK ENTERTAINMENT, INC. f/s/o
BARRY JOSEPHSON; TEMPERANCE
BRENNAN, L.P. f/s/o KATHLEEN REICHS;
22 SNOOKER DOODLE PRODUCTIONS, INC.
f/s/o EMILY DESCHANEL; and BERTHA
23 BLUE, INC. f/s/o DAVID BOREANAZ,

24 Respondents.
25
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28

JAMS Ref. No. 1220052735

**STIPULATION REGARDING CLAIMS
IN ARBITRATION**

Judge: Hon. Peter D. Lichtman (Ret.)

STIPULATION

1 WARK ENTERTAINMNET, INC. f/s/o
2 BARRY JOSEPHSON; TEMPERANCE
3 BRENNAN, L.P. f/s/o KATHLEEN REICHS;
4 SNOOKER DOODLE PRODUCTIONS, INC.
f/s/o EMILY DESCHANEL; and BERTHA
BLUE, INC. f/s/o DAVID BOREANAZ,

5 Counter-Claimants,

6 vs.

7 TWENTIETH CENTURY FOX FILM
CORPORATION, a Delaware corporation;
8 FOX ENTERTAINMENT GROUP, LLC, a
Delaware limited liability corporation;
9 TWENTY-FIRST CENTURY FOX, INC., a
Delaware corporation; and FOX
10 BROADCASTING COMPANY, a Delaware
corporation,

11 Counter-Respondents.
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1 Pursuant to Scheduling Order No. 1, Twentieth Century Fox Film Corporation
2 (“TCFTV”), Fox Entertainment Group, LLC, Twenty-First Century Fox, Inc., and Fox
3 Broadcasting Company (“Fox”), on the one hand, and Temperance Brennan, L.P. f/s/o Kathleen
4 Reichs, Snooker Doodle Productions, Inc. f/s/o Emily Deschanel, and Bertha Blue, Inc. f/s/o
5 David Boreanaz (“KBTF Respondents”), on the other hand, have met and conferred regarding
6 Judge Rico’s Order of April 8, 2016 (“April 8 Order”) to determine the claims that are the subject
7 of this arbitration. Accordingly, Fox and the KBTF Respondents have agreed as follows:

8 1. This stipulation only concerns the claims that are the subject of this arbitration as
9 alleged in Fox’s January 11, 2016 JAMS Statement of Claim (the “Arbitration Demand”) and the
10 KBTF Respondents’ November 30, 2015 Superior Court Complaint (the “KBTF Respondents’
11 Complaint”). It does not limit the right of any party to amend its claims or to oppose the
12 amendment of any claims in accordance with applicable law and procedure. This stipulation is
13 without prejudice to any party’s position, whether in this arbitration or in the related proceedings
14 before the Superior Court, concerning the relevance of any particular factual allegation to such
15 claims, or to the discoverability or admissibility of any evidence for such claims.

16 2. For the sake of clarity, the parties understand the April 8 Order to pertain to four
17 categories of claims alleged in the KBTF Respondents’ Complaint: (1) “Self-Dealing Claims,”
18 which are claims related to the allegations that TCFTV entered into transactions with affiliates on
19 terms that were not comparable to the terms on which the affiliated entity entered into similar
20 transactions with unrelated third parties; (2) “2009 Release Claims,” which are claims related to
21 2009 release agreements concerning Seasons 5 and 6 of *Bones*; (3) “Contingent Compensation
22 Claims,” which are claims that TCFTV miscalculated, misclassified, or improperly allocated the
23 contingent compensation to which the KBTF Respondents are due or failed to negotiate their
24 contingent compensation definitions in good faith; and (4) “Failure to Permit Audit Claims,”
25 which are allegations by the KBTF Respondents that TCFTV failed to provide the auditor with
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1 documents it was contractually obligated to provide.¹ The Self-Dealing and 2009 Release Claims
2 are arbitrable; the Contingent Compensation Claims and Failure to Permit Audit Claims are not.
3 The division of arbitrability of claims is irrespective of (a) whether the claims are contractual, tort,
4 statutory, equitable or otherwise in nature; and (b) which Fox entity or entities who are parties to
5 this arbitration the claims are alleged against.

6 3. Fox and the KBTF Respondents understand and agree to treat the claims alleged in
7 the Arbitration Demand and the KBTF Respondents' Complaint as follows:

8 **Fox JAMS Statement of Claim**

9 4. All of the third, fourth, sixth, and seventh causes of action (paragraphs 48-53, 57-
10 62) of Fox's Statement of Claim are arbitrable. The first, second, eighth, and ninth causes of
11 action of Fox's Statement of Claim (paragraphs 40-47, 63-68) involve both arbitrable claims and
12 claims not subject to arbitration.

13 5. Attached hereto as Exhibit A is the Fox Statement of Claims. Claims that are fully
14 arbitrable are highlighted in yellow, and claims that are partially arbitrable are highlighted in blue.

15 **KBTF Respondents' Complaint**

16 6. The allegations forming the basis for claims in the KBTF Respondents' Complaint
17 are found in paragraphs 38-77 of that document. The parties agree that allegations contained in
18 paragraphs 43-54 and 72-77 of the KBTF Respondents' Complaint are arbitrable, while the
19 allegations in paragraphs 55-71 are not subject to arbitration. The allegations in paragraphs 38-42
20 are inarbitrable to the extent that they include only Failure To Permit Audit Claims, but arbitrable
21 to the extent that they also include Self-Dealing Claims. Accordingly, all of the third, fourth, fifth,
22 and sixth causes of action (paragraphs 89-117) are arbitrable. The first, second, seventh and eighth
23 causes of action of the KBTF Respondents' Complaint (paragraphs 78-88, 118-127) involve both
24 arbitrable claims and claims that are not subject to arbitration.

25
26
27 ¹ Although Judge Rico did not explicitly use the label "Failure to Permit Audit Claims" in his
28 April 8 Order, the parties believe that those claims are fairly encompassed in Judge Rico's
discussion of the non-arbitrable claims alleged in the KBTF Respondents' Complaint.

1 7. Attached hereto as Exhibit B is the KBTF Respondents' Complaint. Claims that are
2 fully arbitrable are highlighted in yellow, and claims that are partially arbitrable are highlighted in
3 blue.

4
5 DATED: May 13, 2016

MUNGER, TOLLES & OLSON LLP

6
7
8 By: Anjan Choudhury /arb

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TWENTIETH CENTURY FOX FILM

CORPORATION; FOX ENTERTAINMENT GROUP,

LLC; TWENTY-FIRST CENTURY FOX, INC.; FOX

BROADCASTING COMPANY

14
15 DATED: May 13, 2016

KASOWITZ BENSON TORRES & FRIEDMAN LLP

16
17
18 By: Candace Frazier

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REICHS; SNOOKER DOODLE PRODUCTIONS,

INC. f/s/o EMILY DESCHANEL; BERTHA BLUE,

INC. f/s/o DAVID BOREANAZ

Exhibit A

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FOX ENTERTAINMENT GROUP, LLC;
10 TWENTY-FIRST CENTURY FOX, INC.; FOX
BROADCASTING COMPANY

JAMS

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FOX ENTERTAINMENT GROUP, LLC, a
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TWENTY-FIRST CENTURY FOX, INC., a
17 Delaware corporation; and FOX
BROADCASTING COMPANY, a Delaware
18 corporation,

19 Claimants,

20 vs.

21 WARK ENTERTAINMENT, INC. f/s/o
BARRY JOSEPHSON; TEMPERANCE
22 BRENNAN, L.P. f/s/o KATHLEEN REICHS;
SNOOKER DOODLE PRODUCTIONS, INC.
23 f/s/o EMILY DESCHANEL; and BERTHA
BLUE, INC. f/s/o DAVID BOREANAZ,
24

Respondents.

JAMS File No.

STATEMENT OF CLAIM

26 Claimants Twentieth Century Fox Television ("TCFTV"), a division of Twentieth Century
27 Fox Film Corporation; Fox Entertainment Group, LLC ("FEG"); Twenty-First Century Fox, Inc.
28

1 ("21CF"); and Fox Broadcasting Company ("FBC" and, together with other Claimants, "Fox")
2 allege against Respondents Wark Entertainment, Inc., f/s/o Barry Josephson; Temperance
3 Brennan, L.P. f/s/o Kathleen Reichs; Snooker Doodle Productions, Inc. f/s/o Emily Deschanel;
4 and Bertha Blue, Inc. f/s/o David Boreanaz (collectively, "Respondents") as follows:

5 INTRODUCTION

6 1. This dispute concerns Respondents' demand that Fox pay them millions of dollars
7 in undue compensation for their work on the television series *Bones* (the "Series"). In accordance
8 with its agreements, TCFTV has already paid Respondents millions of dollars for their services on
9 the Series. Fox denies that it has any additional liability to Respondents.

10 2. Under their relevant agreements with TCFTV ("the Agreements," true and correct
11 copies of which are attached hereto as Exhibits 1-4), Respondents — who have always been
12 represented by sophisticated legal counsel — are claiming entitlement to a contingent percentage
13 of the modified adjusted gross receipts ("MAGR") derived from the Series, determined pursuant
14 to Fox's standard television definition of MAGR. Fox has complied with all of its obligations
15 under the Agreements, and does not owe any further payment to Respondents. Nevertheless,
16 Respondents have claimed in two separate lawsuits (true and correct copies of the Complaints in
17 those lawsuits are attached hereto as Exhibits 5 ("Wark Compl.") and 6 ("TB Compl.")) that Fox
18 has improperly reduced Respondents' contingent compensation by miscalculating MAGR, by
19 failing to negotiate comparable deals with Affiliated Companies, and by failing to consult with
20 them under the Agreements. They also allege that Fox failed to allow a full and complete audit of
21 the Series's books and records.

22 3. The Agreements, however, all contain broad arbitration clauses that provide that all
23 of Respondents' claims (the "Claims") must be submitted to binding arbitration before JAMS.¹

24
25 ¹ Deschanel's and Boreanaz's agreements covering Seasons 8-11 of the Series (unlike their
26 agreements for Seasons 1-7) provide for disputes to be submitted to a general non-jury reference
27 pursuant to California Code of Civil Procedure § 638, or, if the dispute is "not capable of being
28 decided" by means of a general reference, to arbitration. Exs. 7 ("Boreanaz 2012 Agreement")
Rider at 3, and 8 ("Deschanel 2012 Agreement") Rider at 3. Fox does not believe that Boreanaz
and Deschanel are bringing claims related to Seasons 8-11 in their Complaints. Even if they were,

1 Specifically, they provide that “[a]ny dispute arising under the provisions of this [Distribution
2 Controls] Paragraph” must be arbitrated. *See* Ex. 1 (“Josephson Agreement”) ¶ 10(c).² The
3 Distribution Controls Paragraph, in turn, provides that TCFTV makes “no express or implied
4 warranty” as to the “manner or extent” of the distribution or exploitation of the Series, or the
5 “amount of money” to be derived therefrom. *See, e.g., id.* ¶ 10(a). It further acknowledges that
6 “[TCFTV] intends to make use of Affiliated Companies [as defined in the Agreement] in
7 connection with its distribution and exploitation of the Series episodes” and that Respondents
8 “expressly waive any right to object to such distribution and exploitation.” *See, e.g., id.* ¶ 10(b).
9 TCFTV, in turn, agrees that any transactions with Affiliated Companies “will be on monetary
10 terms comparable to the terms on which the Affiliated Company enters into similar transactions
11 with unrelated third party distributors for comparable programs.” *Id.*

12 4. All of the Claims arise under the Distribution Controls Paragraph. First,
13 Respondents make self-dealing and syndication accusations that allege direct violations of the
14 terms of that paragraph. Second, Respondents’ claims that TCFTV miscalculated MAGR, failed
15 to consult with them, and failed to permit a full and complete audit clearly challenge TCFTV’s
16 decisions concerning the manner and extent of distribution and exploitation of the Series. Lastly,
17 Josephson and Reichs make allegations challenging a 2009 release of claims they executed
18 concerning network fees for Seasons 5 and 6 of the Series (the “2009 Release”). Because the
19 allegations with respect to the 2009 Release plainly challenge TCFTV’s dealings with alleged
20 Affiliated Companies, they are also subject to arbitration under the Distribution Controls
21 Paragraph.

22 5. The claims with respect to the 2009 Release also fall within a second arbitration
23 provision. The 2009 Release requires that “any dispute [that] arises out of, or with respect to, this
24 Agreement, including a claimed breach thereof (whether sounding in contract or tort)” that cannot
25 however, Fox would move to compel the submission of those claims to a general reference and, if
26 that motion were denied, to include them in the instant arbitration.

27 ² For ease of reference, this Statement of Claim relies largely on the Josephson Agreement.
28 Except where indicated, the terms of the other relevant Agreements are materially similar to those
of the Josephson Agreement.

1 be resolved through non-binding mediation must be resolved through "binding arbitration before a
2 mutually selected arbitrator affiliated with J.A.M.S." Ex. 9 ("Release") ¶ 4.

3 6. Accordingly, Claimants respectfully demand arbitration of the Claims, to take place
4 in Los Angeles, California, pursuant to the agreements of the parties.

5 **PARTIES**

6 7. At all relevant times, Twentieth Century Fox Film Corporation was and is a
7 corporation organized and existing under the laws of the State of Delaware, with its principal place
8 of business in Los Angeles, California. TCFTV is a division of Twentieth Century Fox Film
9 Corporation. Both TCFTV and Twentieth Century Fox Film Corporation are referred to herein as
10 TCFTV. Twentieth Century Fox Film Corporation is an indirectly wholly owned subsidiary of
11 21CF.

12 8. At all relevant times, FEG was and is a limited liability company organized and
13 existing under the laws of the State of Delaware, with its principal place of business in Los
14 Angeles, California. FEG is an indirectly wholly owned subsidiary of 21CF.

15 9. At all relevant times, 21CF was and is a corporation organized and existing under
16 the laws of the State of Delaware, with its principal place of business in New York, New York.

17 10. At all relevant times, FBC was and is a corporation organized and existing under
18 the laws of the State of Delaware, with its principal place of business in Los Angeles, California.
19 FBC is an indirectly wholly owned subsidiary of 21CF.

20 11. On information and belief, at all relevant times, Wark Entertainment, Inc. was and
21 is a corporation organized and existing under the laws of the State of California, with its principal
22 place of business in Los Angeles County, California. Wark Entertainment, Inc. is the loan-out
23 company through which Barry Josephson provides his services to the Series.

24 12. On information and belief, at all relevant times, Temperance Brennan, L.P. was and
25 is a partnership organized under the laws of the State of Delaware, with its principal place of
26 business in Los Angeles County, California. Temperance Brennan, L.P. is the loan-out company
27 through which Kathleen Reichs provides her services to the Series.

13. On information and belief, at all relevant times, Snooker Doodle Productions, Inc. was and is a corporation organized under the laws of the State of California with its principal place of business in Los Angeles County, California. Snooker Doodle Productions, Inc. was and is the loan-out company through which Emily Deschanel provides her services to the Series.

14. On information and belief, at all relevant times, Bertha Blue, Inc. was and is a corporation organized under the laws of the State of California, with its principal place of business in Los Angeles County, California. Bertha Blue, Inc. is the loan-out company through which David Boreanaz provides his services to the Series.

BACKGROUND

The Agreements

15. As part of its effort to develop the Series, TCFTV hired Reichs and Josephson to serve as producers of the Series, and Boreanaz and Deschanel to serve as actors.³ Each entered into a written agreement with TCFTV (the “Initial Agreements”) in either 2004 or 2005. The Reichs and Josephson Agreements remain in effect. Boreanaz and Deschanel have both entered into subsequent agreements with TCFTV, one governing their appearances in Seasons 4-7 (the “2008 Agreements”), and one governing their appearances in Seasons 8-11 (the “2012 Agreements”).

16. Pursuant to the Agreements relevant here, each Respondent claims to be entitled to certain fixed compensation, as well as a contingent percentage of the Series's MAGR. All of the Agreements contain a "Distribution Controls" Paragraph, which establishes broadly the scope and limitations of TCFTV's obligations and warranties to Respondents.⁴ That paragraph also contains an arbitration clause, which mandates that "[a]ny dispute arising under the provisions of this [Distribution Controls] Paragraph . . . shall be arbitrated by, and under the rules of, J.A.M.S." See, e.g., Josephson Agreement ¶ 10(c).

³ Although Reichs, Josephson, Boreanaz, and Deschanel were hired through their loan-out companies, Fox will refer to the individual, rather than the loan-out company.

⁴ Deschanel's 2005 Agreement lacks any provision for contingent compensation, including any provision that would allow a claim to a percentage of MAGR, and therefore she cannot allege any claims on the basis of the 2005 Agreement.

1 17. The Distribution Controls Paragraph makes clear that Respondents have only a
2 contingent entitlement to monies derived from *Bones* — including a percentage of MAGR — and
3 that the Agreements do not entitle Respondents to any involvement in the decisions that determine
4 the Series's profitability or guarantee that the Series will earn any specific amount of money for
5 TCFTV and, in turn, Respondents. Rather, aside from a few listed exceptions, TCFTV has
6 complete discretion with respect to how to distribute and monetize the Series, and makes no
7 promises about "the amount of money to be derived from the distribution, exhibition and
8 exploitation of each Series episode," or even that the Series will be broadcast at all. *See, e.g.,*
9 Josephson Agreement ¶ 10(a).

10 18. The Distribution Controls Paragraph further discloses that TCFTV "intends to
11 make use of Affiliated Companies [as defined in the Agreements] in connection with its
12 distribution and exploitation of the Series episodes . . . as, when and where [TCFTV] deems it
13 appropriate to do so," and waives any right that Respondents may otherwise have had "to object to
14 such distribution and exploitation of any Series episode . . . or assert any claim that [TCFTV]
15 should have offered the applicable distribution/exploitation rights to unaffiliated third parties."
16 *See, e.g.,* Josephson Agreement ¶ 10(b). In return, TCFTV promises in the Distribution Controls
17 Paragraph that transactions with an Affiliated Company will be "on monetary terms comparable to
18 the terms on which the Affiliated Company enters into similar transactions with unrelated third
19 party distributors for comparable programs." *See, e.g., id.*

20 19. If an individual entitled to contingent compensation does not believe that TCFTV
21 properly calculated his or her share of the Series's MAGR, TCFTV's MAGR definitions (which
22 are incorporated into the Agreements), provide that he or she may, within a specified timeframe,
23 notice an audit of TCFTV's books and records. Ex. 10 ("MAGR Definitions") ¶ VI(G). If the
24 individual wishes to contest TCFTV's calculation, he or she must submit a written "objection" to
25 those calculations within a particular time period. *Id.* ¶ VI(H). If the objections are not resolved
26 amicably, the individual may bring a claim within a certain time after the applicable objection
27 period expires. *Id.*

20. If the individual fails to submit a written objection or bring a claim within the specified time period, the studio's calculations "shall be deemed correct and shall be conclusive and binding," and any objection to those calculations "shall be deemed to have been waived." MAGR Definitions ¶ VI(H).

The 2009 Release

21. *Bones* first premiered on FBC in 2005, and has been broadcast by the network ever since. However, at the end of its fourth season, the Series was on the verge of cancellation due to ratings. In fact, FBC initially declined its option to renew the Series for two additional seasons, informing TCFTV that the specified license fee was too high. FBC was, however, willing to continue broadcasting the Series if TCFTV agreed to a reduced license fee. In order to keep the Series on the air, TCFTV ultimately agreed to the reduced fee.

22. Josephson and Reichs subsequently signed the 2009 Release, consenting to the lower fee. Specifically, the 2009 Release waives “any right to assert any claim in connection with the Renewal [of the Series for Seasons 5 and 6], the license fee and [TCFTV’s] acceptance thereof.” Release ¶ 2(c).

23. Like the Agreements, the 2009 Release contains an arbitration clause in which the parties agreed that “[i]f any dispute (“Dispute”) arises out of, or with respect to, this Agreement, including a claimed breach thereof (whether sounding in contract or tort), and . . . [i]f, after efforts to mediate and resolve outstanding issues, there remain unresolved issues, either Party may commence arbitration proceedings.” Release ¶ 4.

Respondents Pursue Litigation Instead of Arbitration

24. Respondents engaged the accounting firm now known as Green Hasson & Janks LLP to audit TCFTV's books and records relating to *Bones* from September 2005 (the Series's first season) through September 2011 (the Series's seventh season). That audit was completed in May 2014.

25. On November 25, 2015, Josephson filed a Complaint in Los Angeles County Superior Court through his loan-out company (Case No. BC602287). The other Respondents filed a separate lawsuit in Los Angeles County Superior Court on November 30, 2015 (Case No.

1 BC602548). The Complaints bring claims against TCFTV for breach of contract, breach of the
2 covenant of good faith and fair dealing, and declaratory judgment, *see* Wark Compl. ¶¶ 26-33, 64-
3 66; TB Compl. ¶¶ 78-88, 123-27; against FBC, FEG, and 21CF for inducing breach of contract
4 and intentional interference with contract, *see* Wark Compl. ¶¶ 34-52; TB Compl. ¶¶ 99-117;
5 against TCFTV, FBC, and FEG for unfair competition, *see* Wark Compl. ¶¶ 53-59; and against all
6 Claimants for fraudulent inducement, fraudulent concealment, and an accounting, *see* Wark
7 Compl. ¶¶ 60-63, 67-68; TB Compl. ¶¶ 89-98, 118-22.

8 26. All of the claims raised in those Complaints, however, are subject to the parties'
9 agreements to arbitrate. Indeed, binding and applicable arbitration provisions are found in the
10 very Agreements that the Respondents claim they want enforced.

11 27. Respondents' allegations in those Complaints fall into four general categories.
12 First, Respondents allege that TCFTV failed to abide by its obligation in the Distribution Controls
13 Paragraph to "make transactions with [Affiliated Companies] on monetary terms comparable to
14 the terms on which the [Affiliated Company] enter[s] into similar transactions with unrelated third
15 party distributors for comparable programs" (the "Self-Dealing Claims"). *See* Wark Compl. ¶
16 25(D); TB Compl. ¶¶ 43-54.

17 28. Second, Respondents contend that, in various ways, TCFTV miscalculated the
18 income they are due or failed to consult with them about that income (the "Contingent
19 Compensation Claims"). *See* Wark Compl. ¶¶ 25(A)-(C), (F)-(G); TB Compl. ¶¶ 55-71. Broadly
20 speaking, MAGR is calculated by subtracting TCFTV's expenses and other defined deductions
21 from TCFTV's "Defined Gross Receipts." The Contingent Compensation Claims involve both
22 sides of the MAGR equation: They allege that TCFTV minimized the amount of money that it
23 earned from its distribution, exploitation, and marketing of the Series; and maximized the
24 expenses that it incurred in connection with said distribution, exploitation, and marketing. *See*
25 Wark Compl. ¶¶ 25(A)-(C); TB Compl. ¶¶ 55-68. Additionally, Respondents have raised
26 Contingent Compensation Claims concerning how alleged failures to consult them purportedly
27 affected the income they derived from MAGR itself, *see* Wark Compl. ¶ 25(F); TB Compl. ¶ 70,
28

1 and from TCFTV's classification of episodes of the Series, *see* Wark Compl. ¶ 25(G); TB Compl.
2 ¶ 69.

3 29. Third, Reichs, Boreanaz, and Deschanel allege that TCFTV breached the
4 Agreements by failing to provide the auditor with a variety of documents that they believe he
5 needed to complete his review (the "Audit Claims"). TB Compl. ¶¶ 38-41.

6 30. Fourth, Josephson and Reichs challenge the validity of the 2009 Release, arguing
7 that TCFTV and FBC falsely claimed that FBC would cancel the Series if they did not sign it.
8 *See* Wark Compl. ¶¶ 53-63; TB Compl. ¶¶ 73-77.

9 31. Fox denies that it has any liability on any of Respondents' claims. First, all of
10 TCFTV's transactions with Affiliated Companies were on monetary terms that were at least
11 equivalent to those that the affiliated entity offers to unrelated third parties. Second, TCFTV has
12 fully complied with the audit provisions of the Agreements. Third, TCFTV correctly calculated
13 MAGR, and, consequently, the contingent compensation to which Respondents were entitled.
14 Fourth, the 2009 Release is valid and binding on Josephson and Reichs.

15 32. Through this Demand, Fox seeks to enforce the parties' agreement to arbitrate these
16 disputes. Specifically, Fox seeks a declaration that: TCFTV has not breached the parties'
17 contracts or the covenant of good faith and fair dealing; FBC, FEG, and 21CF did not induce
18 TCFTV to breach its contracts with Respondents or intentionally interfere with those contracts;
19 TCFTV, FBC, and FEG did not engage in unfair competition; no Claimant fraudulently induced
20 Reichs or Josephson to sign the Release or fraudulently concealed material facts with respect to
21 the Release; and Respondents are not entitled to an accounting. To the extent that Respondents
22 seek to raise any additional claims against Fox in their Superior Court Complaints on the basis of
23 those Agreements, Fox also seeks to resolve those disputes in this binding arbitration before
24 JAMS.

25 JURISDICTION

26 33. Josephson's, Reichs's, and Boreanaz's Initial Agreements, and Boreanaz's and
27 Deschanel's 2008 Agreements, provide that any dispute that arises under the Distribution Controls
28 Paragraph shall be resolved by binding arbitration before JAMS.

1 34. In particular, Paragraph 10(c) of the Josephson Agreement (attached hereto as
2 Exhibit 1) states:

3 **Arbitration:** Any dispute arising under the provisions of this Paragraph 10.
4 [titled "Distribution Controls"] shall be arbitrated by, and under the rules of,
5 J.A.M.S. ("JAMS") in binding arbitration in Los Angeles, California and before a
6 mutually selected arbitrator experienced in the United States television industry.
7 Although each side shall advance one-half of the fee of the arbitrator and for
8 JAMS' services, the prevailing party in such arbitration shall be entitled to recover
9 all costs of arbitration, including reasonable outside attorneys' fees and costs.

10 35. Paragraph 13(c) of the Reichs Agreement (attached hereto as Exhibit 2) states:

11 **Arbitration:** Any dispute arising under the provisions of this Paragraph
12 [titled "Distribution Controls"] shall be arbitrated by, and under the rules of,
13 J.A.M.S./Endispute ("JAMS") in binding arbitration in Los Angeles, California and
14 before a mutually selected arbitrator experienced in the United States television
15 industry. Although each side shall advance one-half of the fee of the arbitrator and
16 for JAMS' services, the prevailing party in such arbitration shall be entitled to
17 recover all costs of arbitration, including reasonable attorneys' fees and costs.

18 36. The "Distribution Controls" sub-paragraph of the "Contingent Compensation"
19 provision of the Rider to the 2005 Boreanaz Agreement (attached hereto as Ex. 3) states:

20 **Arbitration:** Any dispute arising under the provisions of this Paragraph shall
21 be arbitrated by, and under the rules of, J.A.M.S. ("JAMS") in binding arbitration
22 in Los Angeles, California and before a mutually selected arbitrator experienced in
23 the United States television industry. Although each side shall advance one-half of
24 the fee of the arbitrator and for JAMS' services, the prevailing party in such
25 arbitration shall be entitled to recover all costs of arbitration, including reasonable
26 outside attorneys' fees and costs.⁵

27 37. The "Distribution Controls" Provision of the Rider to the 2008 Deschanel
28 Agreement (attached hereto as Exhibit 4) states:

Arbitration: Any dispute arising under the provisions of this "Distribution
Controls" Paragraph shall be arbitrated by, and under the rules of, J.A.M.S.
("JAMS") in binding arbitration in Los Angeles, California and before a mutually
selected arbitrator experienced in the United States television industry. Although
each side shall advance one-half of the fee of the arbitrator and for JAMS' services,
the prevailing party in such arbitration shall be entitled to recover all costs of
arbitration, including reasonable outside attorneys' fees and costs.

 38. The 2009 Release (attached hereto as Exhibit 9) similarly provides that the Parties'
disputes with respect to the 2009 Release shall be subject to binding arbitration before JAMS.

⁵ The 2008 Boreanaz Agreement incorporates the 2005 Boreanaz Agreement's arbitration
provision. See Ex. 11 ("2008 Boreanaz Agreement") Rider at 1.

1 39. In particular, Paragraph 4 of the 2009 Release states:

2 Negotiation, Mediation and Arbitration: If any dispute ("Dispute") arises
3 out of, or with respect to, this Agreement, including a claimed breach thereof
4 (whether sounding in contract or tort), and cannot be settled through negotiation,
5 the parties agree first to try in good faith to arbitrate the Dispute by mediation
6 utilizing the mediation services of a mutually agreed upon mediator. Written notice
7 of mediation must be given as to all Disputes. The mediation of all Disputes must
8 be completed within 45 business days from the date of selection of the mediator.
9 Negotiation shall be non-binding, directed towards resolution of all outstanding
10 issues, and designed to produce a comprehensive settlement of the Dispute. If,
11 after efforts to mediate and resolve outstanding issues, there remain unresolved
12 issues, either Party may commence arbitration proceedings in Los Angeles through
13 binding arbitration before a mutually selected arbitrator affiliated with J.A.M.S.
14 and with experience in the United States television industry.

9 **FIRST CAUSE OF ACTION**

10 **Declaratory Relief (No Breach of Contract)**

11 **(By TCFTV Against All Respondents)**

12 40. Claimants incorporate paragraphs 1-39 above, inclusive, of this Demand as though
13 fully set forth herein.

14 41. TCFTV has complied fully with all of its obligations under the Agreements.

15 42. At present, an actual, substantial controversy exists between TCFTV and
16 Respondents. Respondents contend that TCFTV has violated the Agreements in several respects,
17 including by entering into transactions with Affiliated Companies on terms that are not
18 comparable to those that the Affiliated Company gives to unrelated third parties, by miscalculating
19 MAGR, by failing to consult with them about the MAGR definitions or syndication, by failing to
20 allow a full and complete audit, and by classifying episodes by the season in which they were
21 produced rather than the season in which they aired.

22 43. TCFTV, in contrast, contends and seeks a declaration here that it has complied with
23 the Agreements in good faith and has not breached any obligation to Respondents, and that
24 Respondents are entitled to no remedy whatsoever for any alleged self-dealing, miscalculation of
25 MAGR, failure to consult, failure to allow a full and complete audit, or misclassification of
26 episodes.

1 **SECOND CAUSE OF ACTION**

2 **Declaratory Relief (No Breach of Implied Covenant of Good Faith and Fair Dealing)**

3 **(By TCFTV Against All Respondents)**

4 44. Claimants incorporate paragraphs 1-43 above, inclusive, of this Demand as though
5 fully set forth herein.

6 45. TCFTV has complied fully with all of its obligations under the Agreements.

7 46. At present, an actual, substantial controversy exists between TCFTV and
8 Respondents regarding the parties' rights, duties, and obligations. Respondents allege in their
9 Complaints that TCFTV has breached the covenant of good faith and fair dealing by, among other
10 conduct, licensing the Series at below-market rates, altering the license agreement without
11 informing Respondents, and miscalculating MAGR.

12 47. TCFTV, in contrast, contends and seeks a declaration that it has complied fully
13 with all of its obligations under the Agreements and has not committed any breach of the covenant
14 of good faith and fair dealing, and that Respondents are entitled to no remedy whatsoever for any
15 alleged self-dealing, alteration of licenses, or miscalculation of MAGR.

16 **THIRD CAUSE OF ACTION**

17 **Declaratory Relief (No Fraudulent Inducement)**

18 **(By All Claimants Against Reichs and Josephson)**

19 48. Claimants incorporate paragraphs 1-47 above, inclusive, of this Demand as though
20 fully set forth herein.

21 49. At present, an actual, substantial controversy exists between Claimants and Reichs
22 and Josephson regarding the parties' rights, duties, and obligations. Reichs and Josephson allege
23 in their Complaints that the 2009 Release is a result of fraudulent inducement.

24 50. Claimants, in contrast, contend and seek a declaration that the 2009 Release was
25 not the result of fraudulent inducement, that the 2009 Release is valid and binding on Reichs and
26 Josephson, and that Reichs and Josephson are entitled to no remedy whatsoever with respect to the
27 2009 Release.

1 **FOURTH CAUSE OF ACTION**

2 **Declaratory Relief (No Fraudulent Concealment)**

3 **(By All Claimants Against Reichs)**

4 51. Claimants incorporate paragraphs 1-50 above, inclusive, of this Demand as though
5 fully set forth herein.

6 52. At present, an actual, substantial controversy exists between Claimants and Reichs
7 regarding the parties' rights, duties, and obligations. Reichs alleges in her Complaint that
8 Claimants fraudulently concealed material facts relating to their intentions to modify the licensing
9 agreement between FBC and TCFTV in order to induce her into signing the 2009 Release.

10 53. Claimants, in contrast, contend and seek a declaration that they did not conceal any
11 material facts with respect to the 2009 Release, that the 2009 Release is valid and binding on
12 Reichs, and that Reichs is entitled to no remedy whatsoever with respect to the 2009 Release.

13 **FIFTH CAUSE OF ACTION**

14 **Declaratory Relief (No Unfair Competition)**

15 **(By TCFTV, FEG, and FBC Against Josephson)**

16 54. Claimants incorporate paragraphs 1-53 above, inclusive, of this Demand as though
17 fully set forth herein.

18 55. At present, an actual, substantial controversy exists between Claimants and
19 Josephson regarding the parties' rights, duties, and obligations. Josephson alleges in his
20 Complaint that TCFTV, FEG, and FBC engaged in unfair competition by, among other actions,
21 engaging in improper self-dealing, miscalculating MAGR, and fraudulently threatening to cancel
22 *Bones* in order to secure the 2009 Release.

23 56. Claimants, in contrast, contend and seek a declaration that they have not engaged in
24 unfair competition, that they have not engaged in any improper self-dealing, that they did not
25 miscalculate MAGR, that the 2009 Release is valid and binding on Josephson, and that Josephson
26 is entitled to no remedy whatsoever on his unfair competition claim.

1 **SIXTH CAUSE OF ACTION**

2 **Declaratory Relief (No Inducement of Breach of Contract)**

3 **(By 21CF, FEG, and FBC Against All Respondents)**

4 57. Claimants incorporate paragraphs 1-56 above, inclusive, of this Demand as though
5 fully set forth herein.

6 58. At present, an actual, substantial controversy exists between 21CF, FEG, FBC and
7 Respondents regarding the parties' rights, duties, and obligations. Respondents allege in their
8 Complaints that 21CF, FEG, and FBC induced TCFTV to breach the Agreements.

9 59. Claimants, in contrast, contend and seek a declaration that they did not induce
10 TCFTV to breach the Agreements, and that Respondents are entitled to no remedy whatsoever on
11 their inducement of breach of contract claims.

12 **SEVENTH CAUSE OF ACTION**

13 **Declaratory Relief (No Intentional Interference With Contract)**

14 **(By 21CF, FEG, and FBC Against All Respondents)**

15 60. Claimants incorporate paragraphs 1-59 above, inclusive, of this Demand as though
16 fully set forth herein.

17 61. At present, an actual, substantial controversy exists between 21CF, FEG, FBC and
18 Respondents regarding the parties' rights, duties, and obligations. Respondents allege in their
19 Complaints that 21CF, FEG, and FBC intentionally interfered with the Agreements between
20 TCFTV and Respondents.

21 62. Claimants, in contrast, contend and seek a declaration that they did not interfere
22 with TCFTV's performance of its obligations under the Agreements, and that Respondents are
23 entitled to no remedy whatsoever on their interference claims.

24 **EIGHTH CAUSE OF ACTION**

25 **Declaratory Relief (No Entitlement To an Accounting)**

26 **(By All Claimants Against All Respondents)**

27 63. Claimants incorporate paragraphs 1-62 above, inclusive, of this Demand as though
28 fully set forth herein.

1 64. At present, an actual, substantial controversy exists between all Claimants and
2 Respondents. Respondents contend that they are entitled to an accounting of all proceeds
3 generated from, by, or in connection with the distribution, licensing and exploitation of the Series,
4 as well as the fees and expenses incurred by Claimants therewith.

5 65. Claimants, in contrast, contend and seek a declaration that Claimants' accounting
6 practices with respect to the Series are entirely proper, that any "accounting" can only be
7 conducted pursuant to the Audit Provisions in the Agreements, that Claimants have complied with
8 their obligations pursuant to those provisions, and that Respondents are entitled to no remedy
9 whatsoever with respect to their accounting claims.

10 NINTH CAUSE OF ACTION

11 Declaratory Relief (No Entitlement To Declaratory Relief)

12 (By TCFTV Against All Respondents)

13 66. Claimants incorporate paragraphs 1-65 above, inclusive, of this Demand as though
14 fully set forth herein.

15 67. At present, an actual, substantial controversy exists between TCFTV and
16 Respondents. Respondents contend that TCFTV has breached the terms of the Agreements and
17 that they are entitled to a declaration of TCFTV's obligations under the Agreements. Further,
18 Reichs contends that the 2009 Release is null, void, and unenforceable.

19 68. TCFTV, in contrast, contends and seeks a declaration that it has complied with its
20 obligations under the Agreements, that the 2009 Release is valid and enforceable, and that
21 Respondents are entitled to no remedy whatsoever with respect to their claims for declaratory
22 relief.

23 PRAYER FOR RELIEF

24 WHEREFORE, Claimants respectfully pray for the following relief:

- 25 1. For a declaration that:
- 26 a. TCFTV has not breached its Agreements with Respondents;
- 27 b. TCFTV has not breached the covenant of good faith and fair dealing;

- 1 c. Reichs's and Josephson's signing of the 2009 Release is not the result of
2 fraudulent inducement;
- 3 d. Reichs's signing of the 2009 Release is not the result of fraudulent
4 concealment;
- 5 e. The 2009 Release is valid and binding on Reichs and Josephson;
- 6 f. TCFTV, FBC, and FEG did not engage in unfair competition;
- 7 g. 21CF, FEG, and FBC did not induce TCFTV to breach any of the
8 Agreements;
- 9 h. 21CF, FEG, and FBC did not intentionally interfere with TCFTV's
10 performance of the Agreements;
- 11 i. Respondents are not entitled to an accounting;
- 12 j. Respondents are not entitled to declaratory relief; and
- 13 2. For such other and further relief that the Arbitrator may deem just and proper.
14
15
16

17 DATED: January 11, 2016

MUNGER, TOLLES & OLSON LLP

18
19 By: 

20 GLENN D. POMERANTZ

21 Attorneys for Claimants
22 TWENTIETH CENTURY FOX FILM
23 CORPORATION; FOX ENTERTAINMENT GROUP,
24 LLC; TWENTY-FIRST CENTURY FOX, INC.; FOX
25 BROADCASTING COMPANY
26
27
28

Exhibit B

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County of Los Angeles

NOV 30 2015

Sherri R. Carter, Executive Office/Clerk
By:  Deputy
Ishayla Chambers

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

TEMPERANCE BRENNAN, L.P. f/s/o
KATHLEEN REICHS; SNOOKER
DOODLE PRODUCTIONS, INC. f/s/o
EMILY DESCHANEL; and BERTHA
BLUE, INC. f/s/o DAVID BOREANAZ,

Plaintiffs,

v.

TWENTY-FIRST CENTURY FOX, INC.,
a Delaware corporation; FOX
ENTERTAINMENT GROUP, INC., a
Delaware corporation; TWENTIETH
CENTURY FOX FILM CORPORATION,
a Delaware corporation; FOX
BROADCASTING COMPANY, a
Delaware corporation, and DOES 1-20,
inclusive,

Defendants.

Case No.

BC 6 0 2 5 4 8

COMPLAINT FOR:

- (1) BREACH OF CONTRACT;
- (2) BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH AND
FAIR DEALING;
- (3) FRAUDULENT INDUCEMENT;
- (4) FRAUDULENT CONCEALMENT;
- (5) INDUCING BREACH OF CONTRACT;
- (6) INTENTIONAL INTERFERENCE
WITH CONTRACT;
- (7) ACCOUNTING; AND
- (8) DECLARATORY RELIEF

DEMAND FOR TRIAL BY JURY

Trial Date: None

1 Plaintiffs Temperance Brennan, L.P. f/s/o Kathleen Reichs ("Reichs"), Snooker Doodle
2 Productions, Inc. f/s/o Emily Deschanel ("Deschanel"), and Bertha Blue, Inc. f/s/o David
3 Boreanaz ("Boreanaz") (collectively, "Plaintiffs"), for their demand against Defendants Twenty-
4 First Century Fox, Inc. ("21st Fox"), Fox Entertainment Group, Inc. ("FEG"), Twentieth Century
5 Fox Television, a unit of Twentieth Century Fox Film Corporation ("20th TV"), and Fox
6 Broadcasting Company ("FBC") (21st Fox, FEG, 20th TV, and FBC collectively "Fox" or
7 "Defendants"), allege as follows:

8 **I. INTRODUCTION**

9 1. Fox and its predecessors have played a leading role in the well-documented history
10 of Hollywood accounting scandals. In 1979, for example, Fox produced the movie *Alien* that, on
11 information and belief, cost it between \$9 and \$11 million to make and by spring of 1980 had
12 generated more than \$100 million at the box office alone. Yet, when it came time to pay the
13 film's profit participant—the small, independent producer who had contracted for a share of
14 Fox's profits—Fox claimed that the film had somehow *lost* money and that no profits were due.
15 That independent producer sued, and, on information and belief, obtained a favorable settlement.
16 In the years since, Fox has engaged in similar conduct with respect to many of its television
17 series, including mega-hits such as *M*A*S*H*, *The X-Files*, *N.Y.P.D. Blue*, and *Cops*, all of which
18 on information and belief have spawned meritorious lawsuits.

19 2. The Fox conglomerate's latest episode in this grim series concerns *Bones*, the
20 longest running primetime drama in the history of FBC. *Bones* (the "Series") is a one-hour
21 scripted television series based on the best-selling "Temperance Brennan" fiction novels by
22 plaintiff Kathy Reichs. The Series centers around a forensic anthropologist named Dr.
23 Temperance Brennan, who is played by plaintiff Emily Deschanel, and a Special Agent with the
24 FBI named Seeley Booth, who is played by plaintiff David Boreanaz. Together, these characters
25 solve the most baffling murders by combining Dr. Brennan's expertise in cutting edge forensic
26 science with Agent Booth's classically intuitive detective work. *Bones* premiered on FBC in 2005
27 and was heralded by media outlets as "the best drama of the new network season." Since then the
28 Series has been a constant fixture on FBC's primetime schedule. During Season 10 in 2014,

1 *Bones* celebrated its 200th broadcast episode. Very few dramas on any television network, and
2 only two others in the history of FBC, have ever achieved this honor. Showing no signs of
3 stopping its epic run, *Bones* is currently in its 11th season and is heading toward Season 12.

4 3. *Bones*' longevity has made it a cash cow for Fox. For example, on information and
5 belief, FBC has earned many hundreds of millions of dollars selling commercial airtime in
6 connection with the Series. The price that advertisers pay for such airtime depends in part on
7 Nielsen audience ratings. In the United States alone, *Bones* averaged 9 million weekly viewers in
8 its most recent season, which made it FBC's second most watched primetime television series.
9 Separate and apart from these advertising revenues, 20th TV—Fox's production and distribution
10 arm—has received hundreds of millions of dollars from the exploitation of the Series in over 150
11 territories throughout the world. According to Gary Newman, Fox Television Group chairman
12 and Chief Executive Officer, the Series has been "incredibly successful internationally, in
13 syndication, on SVOD [subscription video-on-demand] and Netflix." Media outlets have echoed
14 this sentiment, referring to *Bones* as Fox's "golden child."

15 4. The success of *Bones* has been all the more impressive considering its frequent
16 migration on FBC's primetime schedule. On information and belief, television series achieve
17 better Nielsen audience ratings when they are broadcast on the same day and time each week so
18 that viewers can establish a habit of tuning in for "appointment viewing." Yet in an effort to
19 provide ratings "Band-Aids" for FBC, which in recent history has had fewer than a handful of
20 dramas continue beyond three seasons, FBC has broadcast original *Bones* episodes in seven
21 different time periods spanning five different nights. According to Mr. Newman: "To have a
22 show that resilient is an incredible luxury." Indeed, the value of *Bones* to Fox goes well beyond
23 the revenues that FBC and 20th TV have generated through advertising and licensing the Series.

24 5. Plaintiff Reichs, a forensic anthropologist, is the inspiration for Temperance
25 Brennan's television persona. In return for her life story rights, the television rights to her novels,
26 and her agreement to render producing services for the Series, 20th TV promised her a 5% share
27 of the Series profits. Plaintiffs Deschanel and Boreanaz, for their leading roles in the Series, are
28

1 each contractually entitled to a 3% share of Series profits. All three Plaintiffs are entitled to
2 periodic accounting statements showing how 20th TV calculates their profits.

3 6. As the Series became more profitable for Fox over the years, these accounting
4 statements issued by 20th TV counter-intuitively showed Plaintiffs falling farther and farther away
5 from achieving profits. In 2010, for example, not long after FBC aired the finale of the Series'
6 successful fifth broadcast season, plaintiff Reichs received a statement showing that she was
7 nearly \$90 million away from receiving profits payments, and plaintiffs' Boreanaz and Deschanel
8 received statements showing they were nearly \$100 million away from profits. Knowing of Fox's
9 checkered history in profit participation matters, Plaintiffs noticed an audit of 20th TV's books
10 and records thereafter. During the following years, Plaintiffs' independent auditor set out to
11 uncover the truth but was stymied by 20th TV's refusal to disclose many of the basic documents
12 related to Plaintiffs' profit statements.

13 7. The documents that 20th TV did provide confirmed Plaintiffs' suspicions and
14 showed that they were being cheated out of more than \$100 million in gross revenues and being
15 overcharged many additional millions of dollars in alleged expenses. One of the primary culprits
16 was 20th TV's practice of licensing the Series to Fox affiliates. When "self-dealing" such as this
17 occurs, a temptation exists for the distributor to charge below market rates so that fewer dollars
18 are directed into the "pool" of funds from which profit participants like Plaintiffs share. Many
19 television studios are transparent about this temptation and offer profit participants a "seat at the
20 table" to arrive at what is commonly referred to as an "imputed license fee." 20th TV, however,
21 set its initial network license fees for *Bones* without ever consulting Plaintiffs. And when 20th TV
22 finally did engage with Plaintiffs in the fifth and sixth seasons of the Series, it did so under the
23 threat of cancelling the Series unless Plaintiffs accepted its non-negotiable license fee figure, and
24 then concealed material information about the true value of that figure.

25 8. Plaintiffs' auditor also uncovered a practice whereby 20th TV "packages" films
26 and television series together in a single license agreement, leveraging the most successful series
27 to force licensing of the entire package. But contrary to logic and well-established California law,
28 when 20th TV accounts to profit participants such as Plaintiffs, it allocates a disproportionately

1 greater share of the total fees it receives to the less valuable shows. The result is that Fox
2 understates the revenues on its most successful television series—which are necessarily the ones
3 most likely to result in profit participation payments.

4 9. In addition to uncovering improper self-dealing and misallocation claims, the
5 auditor's review, albeit truncated by 20th TV's withholding of many key documents, unearthed
6 more than a dozen accounting errors, tricks, and deceitful acts that 20th TV has used to deprive
7 Plaintiffs of their entitlement to profits. In short, the audit revealed that, consistent with past Fox
8 practices, 20th TV has engaged in a systematic and pervasive effort to cheat Plaintiffs out of their
9 entitlement to profits from the longest running drama series ever broadcast on FBC. Plaintiffs
10 bring this action to enforce their rights to these payments that they are rightfully owed, which
11 they estimate to collectively exceed tens of millions of dollars.

12 II. JURISDICTION AND VENUE

13 10. The Court has personal jurisdiction over Defendants pursuant to California Code
14 of Civil Procedure 410.10 because the Defendants are domiciled in and/or are doing business in
15 the State of California and some or all of the agreements that are the subject of this dispute were
16 made, entered into, performed, and breached within the State of California. The amount in
17 controversy exceeds the jurisdictional minimum of this Court.

18 11. Venue is proper in this County pursuant to California Code of Civil Procedure
19 § 395(a) and § 395.5 because the Defendants, or some of them, have their principal place of
20 business in the County of Los Angeles and because some or all of the agreements that are the
21 subject of this dispute were made, entered into, performed, and/or breached in this County.

22 12. Venue is also proper under the parties' agreements. Plaintiff Reichs' agreement,
23 attached hereto as Exhibit A, provides that her entitlement to profits "shall be defined, computed,
24 accounted for and paid according to the [profits definition] customarily used by Fox, and shall be
25 incorporated herein, subject to good faith negotiations within the customary parameters for
26 persons of [her] stature in the television industry . . ." Ex. A, 2004 Reichs Agreement, Purchase
27 Agreement, ¶ 10(c). The profits definition being used by Fox is attached hereto as Exhibit B. It
28 provides that the parties' rights to "maintain or institute *any* action or proceeding shall be *only* as

1 provided in [the profits definition],” and then defines such an action as “an action at law for
2 recovery of any such monies claimed.” Ex B, 2007 Profits Definition, ¶ VII.F. On information
3 and belief, 20th TV is using a similar profits definition with an identical dispute resolution
4 provision for Deschanel and Boreanaz.

5 **III. PARTIES**

6 13. Plaintiff Temperance Brennan, L.P. is a partnership organized under the laws of
7 the State of Delaware whose principal place of business is located in the County of Los Angeles.
8 At all relevant times, Temperance Brennan, L.P. was and is the loan-out company through which
9 Kathleen Reichs provides her producing services for the Series.

10 14. Plaintiff Snooker Doodle Productions, Inc. is a corporation organized under the
11 laws of the State of California, with its principal place of business located in the County of Los
12 Angeles. At all relevant times, Snooker Doodle Productions, Inc. was and is the loan-out
13 company through which Emily Deschanel provides her acting and producing services for the
14 Series.

15 15. Plaintiff Bertha Blue, Inc. is a corporation organized under the laws of the State of
16 California, with its principal place of business located in the County of Los Angeles. At all
17 relevant times, Bertha Blue, Inc. was and is the loan-out company through which David Boreanaz
18 provides his acting, directing, and producing services for the Series.

19 16. Defendant Twenty-First Century Fox, Inc., on information and belief, is, and at all
20 relevant times was, a corporation organized and existing under the laws of the State of Delaware
21 doing business throughout the United States, including at its offices in the State of California,
22 County of Los Angeles.

23 17. Defendant Fox Entertainment Group, Inc., on information and belief, is, and at all
24 relevant times was, a corporation organized and existing under the laws of the State of Delaware
25 doing business throughout the United States, including at its principal place of business in the
26 State of California, County of Los Angeles. Fox Entertainment Group, Inc. is, on information and
27 belief, a wholly-owned subsidiary of Twenty-First Century Fox, Inc.

1 18. Defendant Twentieth Century Fox Television, on information and belief, is a unit
2 of Twentieth Century Fox Film Corporation, which, on information and belief, is, and at all
3 relevant times was, a corporation organized and existing under the laws of the State of Delaware
4 doing business throughout the United States, including at its principal place of business in the
5 State of California, County of Los Angeles. Twentieth Century Fox Television, on information
6 and belief, is not a legal entity distinct from Twentieth Century Fox Film Corporation, so
7 Twentieth Century Fox Film Corporation is therefore liable for all acts and omissions made by or
8 on behalf of Twentieth Century Fox Television. Twentieth Century Fox Film Corporation is, on
9 information and belief, a wholly-owned subsidiary of Fox Entertainment Group, Inc. and/or
10 Twenty-First Century Fox, Inc.

11 19. Defendant Fox Broadcasting Company, on information and belief, is, and at all
12 relevant times was, a corporation organized and existing under the laws of the State of Delaware
13 doing business throughout the United States, including at its principal place of business in the
14 State of California, County of Los Angeles. Fox Broadcasting Company is, on information and
15 belief, a wholly-owned subsidiary of Fox Entertainment Group, Inc. and/or Twenty-First Century
16 Fox, Inc.

17 20. Defendants, Does 1 through 20, are sued herein by fictitious names for the reason
18 that their true names are unknown to Plaintiff. Plaintiff will seek leave to amend this Complaint to
19 allege the true names and capacities of these Defendants when their identities have been
20 ascertained. Plaintiff is informed and believes and based thereon alleges that these fictitiously
21 named Defendants are responsible in some manner for the actions and damages alleged herein.

22 21. Plaintiff is further informed and believes and based thereon alleges that
23 Defendants at all times herein alleged were the agents, employees, servants, joint venturers,
24 and/or co-conspirators of each of the other remaining Defendants, and that in doing the things
25 herein alleged were acting in the course and scope of such agency, employment, joint venture,
26 and/or conspiracy.

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IV. FACTUAL BACKGROUND

A. Plaintiffs are the Inspiration for and the Faces of *Bones*

22. *Bones* was inspired by a series of crime novels authored by Reichs, and commonly referred to as the "Temperance Brennan Novels." The first of these novels was released in 1997 and there have been 18 in this series to date. All of the novels feature a protagonist named Dr. Temperance Brennan, a forensic anthropologist whose fictional persona is based on Reichs' real-life experiences, which continue to generate creative material for her novels and the Series.

23. In *Bones*, Dr. Brennan is played by plaintiff Deschanel, and Special Agent Booth is played by plaintiff Boreanaz. The duo are the backbone of the Series, ensuring that millions of viewers tune in each week not only to see the next murder mystery that their characters are able to solve, but also to see the evolution of their relationship. While Dr. Brennan is ruled by her head, Agent Booth is ruled by his heart. These differing perspectives initially give rise to tension between the characters, but ultimately, as is often the case in classic love stories, opposites attract. Through their skillful acting and long-standing dedication to their characters, plaintiffs Deschanel and Boreanaz continue to make palpable for dedicated viewers the powerful chemistry between Dr. Brennan and Agent Booth.

B. The Outsized Success of *Bones*

24. Premiering September 13, 2005 on FBC, *Bones* immediately garnered positive reviews for its infusion of dark humor and character development into an otherwise saturated primetime schedule of crime procedurals. The Series' premiere obtained nearly 11 million viewers and was FBC's highest-rated primetime Tuesday-night drama since the premiere of the hit series *24* four years earlier. Media outlets soon began describing the show as "the best drama of the new network season." FBC, knowing it had a hit on its hands, on information and belief, ordered a full season of *Bones* after a mere three episodes had aired.

25. FBC's instincts proved keen, and the Series continued to generate favorable Nielsen ratings for a freshman drama, finishing the year averaging around 9 million weekly viewers. Remarkably, *Bones* continues to maintain these ratings ten years later in an era when overall audiences have declined in part because, according to FX Networks' CEO John Landgraf:

1 "There is simply too much television." It is due to *Bones*' loyal viewership and its ability to
2 perform regardless of when it airs that FBC has had the luxury of scheduling the Series such that
3 at some point in its run, *Bones* has held a timeslot on every weeknight. It is rare for a series to be
4 moved around the primetime schedule as often as FBC has done with *Bones*, and even rarer still
5 for this type of movement to not negatively affect the overall viewership numbers. It is clear that
6 *Bones* is in a class of its own.

7 26. This durability of the Series often has been touted by Fox. When FBC announced
8 that *Bones* would be renewed for Season 7 in May 2011, its President of Entertainment Kevin
9 Reilly said, "*Bones* is creatively fresh, it's a rock-solid player every time it airs and this season it
10 has helped us win on Thursday nights for the first time in our history." Fox has even used the
11 Series as a lead-in to help improve the viewership of other series aspiring to cultivate the faithful
12 fan base of *Bones*. For example, last month FBC broadcast a cross-over event with *Bones* and
13 *Sleepy Hollow*, beginning a storyline with *Bones* at 8 p.m. and concluding that storyline with
14 *Sleepy Hollow* at 9 p.m. While *Bones* out-performed *Sleepy Hollow*, Fox was able to use the
15 *Bones* viewership to boost *Sleepy Hollow*'s audience by an additional 38% compared to the prior
16 week. It is this type of consistent performance that has allowed *Bones* to earn its accolades as a
17 "golden child" and the longest running drama ever produced and broadcast by Fox.

18 27. Of course, *Bones* would not have achieved this distinction without the ability to
19 generate consistent profits for Fox. According to 20th TV, the Series has earned over 1.1 *billion*
20 dollars in revenues on the 20th TV side alone. This revenue is mostly comprised of fees from
21 domestic broadcast licenses and revenues from syndication, from subscription video-on-demand
22 platforms such as Netflix, and from multiple networks and platforms abroad. Separate and apart
23 from these revenues, on information and belief Fox has generated hundreds of millions of
24 additional dollars in advertising revenues in connection with the 220 *Bones* episodes and counting
25 that have aired to date in original runs and in syndication on Fox's owned and operated network
26 of television channels throughout the United States and abroad.

27 28. *Bones* has also received significant critical acclaim, and the Series and its cast
28 have been recognized by various entertainment industry award nominations. In fact, its cast and

1 crew have been nominated for over 10 different industry awards including the Primetime Emmys
2 and People's Choice Awards.

3 **C. The Agreements Entitling Reichs to Series Profits**

4 29. In or about April 2005, Reichs and 20th TV entered into their initial agreements
5 regarding the Series dated as of September 1, 2004. Attached hereto as Exhibit A are true and
6 correct copies of a redacted Purchase Agreement for Purchase of Literary Material and Life Story
7 Rights and a redacted Option Agreement for Purchase of Literary Material and Life Story Rights,
8 along with supporting exhibits, executed by Reichs and 20th TV (the "2004 Reichs Agreement").

9 30. The 2004 Reichs Agreement entitled Reichs to fixed and contingent compensation
10 in connection with her work on the Series. With respect to the latter, Reichs is entitled to a 5%
11 share of the Series "Modified Adjusted Gross Receipts" ("MAGR"), pursuant to a profits
12 definition that 20th TV promised to supply at a later time. The 2004 Reichs Agreement further
13 provided that after Reichs received the profits definition it would be "subject to good faith
14 negotiations within the customary parameters for persons of [Reichs'] stature in the television
15 industry." Ex. A, 2004 Reichs Agreement, Purchase Agreement, ¶ 10(c).

16 31. It was not until approximately three years later, in November 2007, that 20th TV
17 provided Reichs with its "standard" MAGR definition (the "2007 Profits Definition"). Attached
18 hereto as Exhibit B is a true and correct copy of the correspondence from 20th TV providing
19 Reichs with this 2007 Profits Definition. Notwithstanding 20th TV's promise to subsequently
20 negotiate this 2007 Profits Definition in "good faith," 20th TV never even commenced such
21 negotiations.

22 **D. The Agreements Entitling Deschanel and Boreanaz to Series Profits**

23 32. Plaintiffs Deschanel and Boreanaz became entitled to Series profits when they
24 signed their initial agreements with 20th TV in 2005. Their most recent agreements entitling them
25 to profits, true and correct copies of which are attached hereto with redactions as Exhibits C and
26 D, are dated as of December 24, 2012, and provide for each of them to receive a 3% share of
27 MAGR (the "2012 Actor Agreements"). Similar to the 2004 Reichs Agreement, the 2012 Actor
28 Agreements provide that after Deschanel and Boreanaz receive their MAGR profits definitions,

1 those definitions would be subject to "good faith negotiation within Fox's customary parameters
2 for persons of [Actor's] stature." Exs. C-D, 2012 Actor Agreements, Rider. Unlike with Reichs,
3 however, 20th TV never even sent plaintiffs Deschanel or Boreanaz the profits definition. On
4 information and belief, the profits definition that 20th TV is using to calculate Deschanel and
5 Boreanaz's profit share is substantially similar to the 2007 Profits Definition and identical with
6 respect to the dispute resolution provisions.

7 **E. Plaintiffs Receive No Profits Payments For 10 Years**

8 33. In March 2008, during Season 3 of the Series, 20th TV issued Plaintiffs their first
9 profits accounting statements, which reflected deficits of around \$70 million that each of them
10 would need to recoup before they would receive any payments. In January 2009, during the
11 Series' fourth season, 20th TV issued its second set of statements to Plaintiffs, showing that their
12 deficit had been *increased* to over \$80 million. By the next accounting period the deficit had
13 grown even further, and at one point the deficit approached or exceeded \$100 million depending
14 on the Plaintiff.

15 **F. The Audit**

16 34. Unable to reconcile the growing deficit reported on 20th TV's statements with the
17 fact that *Bones* was in the middle of its sixth successful broadcast season, Plaintiffs exercised
18 their contractual audit rights. Toward that end, their representatives engaged Sills & Gentile
19 (now known as Green Hasson & Janks LLP), an independent third party auditing firm
20 specializing in entertainment industry accounting and transactions, to conduct a review of 20th
21 TV's books and records (the "Audit").

22 35. As explained below, 20th TV withheld from the auditors much of the
23 documentation necessary to conduct this audit and determine the full extent of the underpayments
24 to Plaintiffs. Based on the limited information that 20th TV did provide, however, the auditors
25 uncovered more than twenty accounting violations that they estimated to total well over \$100
26 million in underreported receipts and millions of additional dollars in overcharged expenses.
27 Plaintiffs submitted these findings to 20th TV on or around May 14, 2014 (the "Audit Reports").

28 36. The audit also uncovered the falsity of representations made by 20th TV to

1 Plaintiffs and the concealment of material facts by 20th TV, in connection with discussions
2 between the parties about a potential “release” of claims regarding the license fees that FBC had
3 agreed to pay 20th TV for broadcasting seasons 5 and 6 of the Series (the “2009 Release”).

4 **G. The Tolling Agreements**

5 37. On or about April 25, 2014, 20th TV and Plaintiffs entered into an agreement
6 extending until May 30, 2015 the deadlines under which Plaintiffs could bring the claims set forth
7 in this lawsuit. Attached hereto as Exhibit E is a true and correct copy of this agreement dated
8 April 25, 2014. On May 6, 2015, 20th TV and Plaintiffs agreed to further extend this deadline
9 until November 30, 2015. Attached hereto as Exhibit F is a true and correct copy of this
10 agreement dated May 6, 2015. On November 20, 2015, 20th TV and Plaintiffs agreed to further
11 extend this deadline until May 31, 2016.

12 **V. DEFENDANTS’ BREACHES OF THE AGREEMENTS**

13 **A. Failure to Permit a Full and Complete Audit**

14 38. The 2007 Profits Definition provides Plaintiffs with the right to audit 20th TV’s
15 “books of account which relate to the [Series], in order to verify the accuracy of the transactions
16 or items of information as first reflected in any Negative Cost Summary or any Participation
17 Statement . . .” Ex. B, 2007 Profits Definition, ¶ VI.G. However, when it came time to provide
18 the auditors with the documents necessary to verify the accuracy of these transactions and items,
19 20th TV’s responses ranged from no substantive response, to outright denial, to false
20 representations that it had disclosed all relevant documents.

21 39. One of the most significant revenue streams that television studios like 20th TV
22 typically receive are the fees associated with licensing the rights to broadcast initial runs of a
23 television series on a U.S. network. To arrive at these fees here, on information and belief, 20th
24 TV and FBC negotiated a network license agreement. Notwithstanding repeated requests,
25 however, the auditor was never provided with a complete copy of this network license agreement.

26 40. Nor did 20th TV provide the auditor with any of the scores of license agreements
27 that it entered into with other affiliated companies concerning *Bones*. These included, but were
28 not limited to, agreements with Fox’s home video distribution arm, agreements with the Fox

1 owned and operated stations that broadcast *Bones* in syndication, and agreements with the many
2 Fox International Channels that broadcast the Series in Europe, Latin America, Africa, and Asia.

3 41. In addition to the above, 20th TV failed to provide the auditor with a host of other
4 critical documents including but not limited to:

- 5 • Documents enabling the auditor to calculate the Nielsen rankings of the Series to
6 test 20th TV's calculation of cumulative series deficit reimbursement payments;
- 7 • Documents reflecting the amount of production costs charged in excess of the
8 budgeted amounts for the Series, and documents reflecting how much, if any, of
9 those excess production costs were reimbursed by FBC and credited to Plaintiffs;
- 10 • Documents reflecting the agreements reached, and the revenues received, from
11 licensing the Series on new media platforms such as fox.com and Netflix;
- 12 • The agreement with Shaw Television Limited Partnership in connection with the
13 network broadcast of *Bones* in Canada;
- 14 • Documents related to determining whether Plaintiffs were credited all revenues
15 20th TV received from Turner Entertainment Network ("TEN") in connection with
16 TEN's basic cable television license agreement; and
- 17 • The detail ledger for foreign home video sales.

18 42. Without these and other documents, the auditors could not complete their review
19 or determine the full value of Plaintiffs' claims, though as set forth below, the auditors' findings
20 based on what limited information 20th TV did provide were still significant.

21 **B. Improper Self-Dealing**

22 43. 20th TV has engaged in numerous improper self-dealing license agreements with
23 its affiliated networks and other licensees. Some of the more egregious examples of this
24 misconduct are highlighted below.

25 1. **20th TV's "Sweetheart" Network License Agreement with FBC**

26 44. The fees received by a distributor for licensing the right to broadcast original runs
27 of a television series to a network are among the most significant revenues included in calculating
28 profits. Recognizing this, and the potential conflict of interest when two arms of the same entity

1 negotiate with one another, many studios who produce for their sister networks have adopted an
2 “imputed license fee” model. In essence, this model prevents conflicts by directly inserting the
3 profit participant into licensing negotiations. The studio discloses the amounts that it intends to
4 credit to the profit participant in connection with the network license up front, and the profit
5 participant negotiates the figure and ultimately signs off on it. This imputed license fee model has
6 the benefit of transparency and strives to minimize self-dealing claims such as those in this case.

7 45. Here, however, Plaintiffs were never given a seat at the table when 20th TV
8 “negotiated” the Series initial network license agreement with its sister network FBC. Not
9 surprisingly, the product of that “negotiation” was a schedule of artificially low license fees that
10 benefitted FBC and its parent, 21st Fox, at the expense of Plaintiffs. Then, beginning in Season 5,
11 FBC and 20th TV added insult to injury by conspiring to amend their network license agreement
12 such that FBC would pay even less to 20th TV—and in turn the Plaintiffs—than what it had
13 initially agreed to pay. Through Season 6 these fees were so low that they resulted in a production
14 deficit—the delta between production costs and network license fees—of around \$50 million.

15 46. The “sweetheart” deals that created this deficit do not even come close to
16 satisfying 20th TV’s contractual obligations to enter into license agreements with its affiliates on
17 terms comparable to the terms on which those affiliates enter into similar agreements with
18 unrelated third parties.¹ For example, media outlets have reported that FBC was willing to pay
19 significantly more to license the television series *House* from unrelated distributor Universal
20 Media Studios than FBC paid to license *Bones* from affiliate 20th TV.

21 47. As stated above, 20th TV and FBC also routinely amended the terms of their
22 network license agreement to reduce payment obligations to 20th TV at the expense of Plaintiffs.
23 In addition to the Season 5 example set forth above, the initial 20th TV/FBC network license
24 agreement contained a provision that promised to pay 20th TV “rankings bonuses” depending on
25 how *Bones* compared to certain other primetime television series in terms of Nielsen viewership.
26 Shortly before these bonuses were due, however, FBC and 20th TV conspired to amend this

27 ¹ In this lawsuit, plaintiffs’ Boreanaz and Deschanel do not contest the license fees that were
28 credited to them in connection with Season 11 of the Series.

1 provision and create a pure "ratings" bonus structure. The result, as these Fox affiliates knew but
2 concealed from Plaintiffs, was a reduction of at least \$2.62 million in bonus payments through the
3 Audit Period. Similarly, 20th TV agreed to forego at least \$10,375,000 in "deficit recoupment"
4 payments from FBC without any consideration in return. Had FBC licensed the Series from a
5 third party television studio instead of affiliate 20th TV, on information and belief that third party
6 studio would never have agreed to such financially disadvantageous amendments.

7 **2. 20th TV's "Sweetheart" Deals with Affiliated Foreign Networks**

8 48. *Bones* has performed well not only in the United States but in many of the more
9 than 70 foreign territories in which 20th TV has licensed it. In certain of these territories, 20th TV
10 licensed runs of the Series in non-exclusive arrangements to both its affiliated networks and to
11 unrelated third party networks. The stark differences between the monetary terms of these deals
12 demonstrate how 20th TV has dramatically underpaid Plaintiffs when licensing to its foreign
13 affiliates. By way of example only, 20th TV licensed Season 1 of the Series in Italy to third party
14 network, RTI SPA, for \$3,077 per run while simultaneously licensing Season 1 to its Italian sister
15 network for \$200 per run. The value of the Series was therefore more than 15 times what 20th TV,
16 and consequently Plaintiffs, received from this self-dealing transaction. Likewise, 20th TV
17 licensed Season 1 of the Series in Spain to third party Gestora de Inversiones Audiovisuales La
18 Sexta S.A. for \$24,667 per run, but when dealing with its Spanish sister network, licensed that
19 season for \$300 per run for the same term. In the same territory, 20th TV therefore obtained 82
20 times more fees when licensing the Series to a third party than to its affiliate. Fox has engaged in
21 similar improper self-dealing transactions with numerous other foreign affiliates.

22 **3. Fox's Self-Dealing In New Media Licenses**

23 49. In recent years, the exhibition of television series has evolved beyond traditional
24 linear broadcasts on television screens in the home. These "new media" exhibitions permit
25 viewing of full or partial episodes of television series on platforms including computers, smart
26 phones, and tablets, and allow for downloading and streaming at the convenience of the user.
27 With the emergence of digital subscription video-on-demand options like Hulu and Netflix,

28

1 television studios and distributors are now collectively receiving billions of dollars in exchange
2 for licensing their series and related content to these new media outlets.

3 50. 20th TV's licensing of *Bones* to new media outlets owned in whole or in part by
4 Fox was handled consistent with Fox's overall approach of licensing to related parties at below
5 market rates. One example concerns Hulu, LLC ("Hulu") an entity in which Fox possesses an
6 approximate 33% equity interest according to its SEC 10-K filings. On information and belief,
7 Hulu is available free of charge to viewers and additional premium programming is available at
8 Hulu.com on a monthly subscription basis for \$7.99 per month or a commercial free option for
9 \$11.99 per month. Press releases in or around March 2008, the date of Hulu's public launch,
10 touted *Bones* as among the available Hulu programming.

11 51. On information and belief, the license agreements that 20th TV entered into with
12 related party Hulu for *Bones* differ markedly from the agreements that Hulu enters into with third
13 party distributors for similar television programming. For one, on information and belief, many
14 third party distributors require fixed cash guarantees to license their series to Hulu, but on
15 information and belief 20th TV is licensing *Bones* for a speculative percentage of the ad sales and
16 monthly subscriber fees that Hulu pays to 20th TV. This arrangement shifts the risk onto the Profit
17 Participant and can also result in delayed receipt of license fees. Moreover, it means that 20th TV
18 should be allocating an appropriate percentage of the monthly subscriber fees it receives from
19 Hulu to each individual title it has licensed, including *Bones*. On information and belief, 20th TV
20 has failed to do so, resulting in significant underpayments to Plaintiffs.

21 52. 20th TV has also breached the parties' agreements by licensing the subscription
22 video on demand ("SVOD") rights to current season episodes of *Bones* to Hulu for below market
23 rates. "Current season" refers to the episodes of a television series that make up the season
24 presently being broadcast in original runs on network television, as opposed to episodes that were
25 broadcast in prior seasons. On information and belief, Fox's financial interest in Hulu has resulted
26 in 20th TV licensing current season episodes of *Bones* for less than what Hulu would have paid a
27 third party distributor—sometimes even giving away access to clips and series premieres for free.
28 Moreover, this practice of "stacking" current season episodes on multiple platforms such as FBC

1 and Hulu has, on information and belief, resulted in third party SVOD licensees such as Netflix
2 paying less for those episodes—which have been viewed more often and therefore have lost
3 value—than they would otherwise have paid if the current season episodes were kept off of Hulu.

4 **4. Fox's "Sweetheart" Domestic Syndication Deal**

5 53. On information and belief, 20th TV licensed certain “re-runs” of the Series in
6 syndication to Fox’s owned and operated group of domestic television stations. Where television
7 series are as successful as *Bones*, such syndication agreements typically contain both a fixed cash
8 license fee and a barter component. The barter component gives distributors such as 20th TV the
9 right to sell commercial airtime during the broadcasts of these “re-run” episodes. Here, when
10 dealing with its affiliated stations group, 20th TV obtained no cash license fees, but rather traded
11 *Bones*’ valuable syndication rights for only commercial airtime plus 30 additional seconds of
12 billboard announcements. As an initial matter, 20th TV’s licensing of these valuable rights
13 without including a cash component breached its contractual obligation to deal with affiliates on
14 monetary terms comparable to the terms on which those affiliates enter into similar agreements
15 with third party distributors. Moreover, 20th TV’s failure to credit Plaintiffs with any revenues
16 from the sale of the 30-second billboard announcements it received as consideration constitutes a
17 further breach of its obligations under the parties’ agreements.

18 54. Moreover, 20th TV has rejected lucrative third-party syndication deals opting to
19 instead license basic cable rights to the Series to its affiliates for less than fair market value. In
20 one such example of this self-dealing, on information and belief, 20th TV licensed the Spanish-
21 language rights to the Series to its then sister network MundoFox (now known as MundoMax) for
22 a mere \$13,000 per episode. Knowing that this license fee was well below market value of these
23 rights, 20th TV tried to get Plaintiffs to consent to this transaction by representing that it had
24 contacted all potential Spanish-language buyers and they had passed. But when Plaintiffs’
25 representatives sought to verify that claim, they learned that the other major buyers had never
26 been contacted and knew nothing about this potential opportunity. Moreover, Plaintiffs’
27 representatives were told that these buyers would have paid substantially more than the \$13,000

1 per run that MundoFox offered. Notwithstanding Plaintiffs' objection to this transaction, 20th TV
2 went ahead and licensed the Series to MundoFox.

3 **C. Additional Accounting Claims**

4 55. As detailed in the Audit Report, 20th TV has committed well over a dozen
5 breaches of the parties' agreements in addition to the claims mentioned above. A sampling of
6 these additional accounting claims is set forth below.

7 **1. Improper Allocations**

8 56. When distributing the Series domestically and internationally, 20th TV frequently
9 "packaged" *Bones* with other Fox-owned television series and films and licensed these collective
10 titles as a group. Large distributors such as 20th TV often engage in this practice of "packaging"
11 in an effort to sell as much of their owned content as possible, using the more popular television
12 series and films as "drivers" in these deals, and refusing to sell those "drivers" a la carte. While
13 this strategy is effective in bringing in more revenue for the corporate entity as a whole—because
14 20th TV can force its less popular content on licensees—it often harms profit participants on
15 successful series like *Bones* whose statement are credited at less than market value.

16 57. Where a distributor like 20th TV "packages" content together, it has a duty to
17 allocate the total license fees it receives in good faith relative to the actual value of each title in
18 the package. Here, 20th TV blatantly failed to do so. On information and belief, it often employed
19 what is referred to as a "straight-line" allocation methodology and credited all titles in a particular
20 "package" agreement with the same episodic license fees, notwithstanding their different values
21 to the licensee. In other instances, Fox drastically undervalued *Bones* compared to other less
22 successful Fox titles. For example, in one such agreement, Fox allocated only \$6,000 per episode
23 to *Bones* but then allocated *seven times as much*, \$44,000 per episode, to *Boston Public*—a
24 television series that was cancelled after four seasons. 20th TV's misallocation in favor of *Boston*
25 *Public*—a series that, on information and belief, likely will never generate profit participation
26 payments—ensures that its corporate parent 21st Fox will retain more money by having to pay out
27 fewer dollars to Plaintiffs on *Bones*. On information and belief, 20th TV has failed to properly
28 allocate license fees on many other "package agreements," including those with Netflix and Hulu.

1 2. **Improperly Charging Production Costs Associated with a Spinoff Pilot**

2 58. The 2007 Profits Definition obligated 20th TV to calculate Plaintiffs profits by
3 deducting only those production costs incurred “in connection with the preparation, production,
4 completion and delivery of the completed *Program*,” which the 2007 Profits Definition defined
5 as *Bones*. Notwithstanding this clear language, 20th TV breached the parties’ agreements by
6 deducting \$3.5 million in production costs incurred in connection with a proposed spinoff series
7 called *The Finder* when calculating Plaintiffs’ profits.

8 3. **Improperly Charging Distribution Fees on EST and VOD Receipts**

9 59. With respect to electronic sell-through (“EST”) license agreements, 20th TV
10 accounts to Plaintiffs on a 20% royalty basis, meaning that of the nearly \$8 million in cash that
11 20th TV admits it received in connection with digital downloads of the Series (e.g., iTunes
12 downloads), 20th TV credited to Plaintiffs’ profits definition just \$1.6 million. 20th TV applies the
13 same accounting treatment to video-on-demand (“VOD”), which is when a distributor makes
14 episodes available to consumers on its website or via a set-top box. But 20th TV does not stop
15 there. On top of the 80% of revenues it keeps, 20th TV deducts an additional 30% or 45%
16 distribution fee, thereby effectively reducing the amounts that are used to calculate Plaintiffs’
17 profits to 14% for domestic EST and VOD and 11% for foreign EST and VOD. 20th TV’s
18 purported justification for doing so is that EST and VOD are similar to the hard goods
19 manufactured for DVD sales and this type of accounting treatment is fair with respect to such
20 hard goods. But the expenses associated with DVD sales far outweigh the negligible costs
21 associated with EST and VOD. Using this improper accounting treatment has given 20th TV a
22 windfall and caused Plaintiffs to suffer a detriment of at least \$4.2 million in Gross Receipts.

23 4. **Improper Distribution Charges**

24 60. In addition to crediting Plaintiffs with less than 20% of certain revenue streams
25 using a royalty-based accounting methodology, 20th TV has also improperly charged certain
26 expenses against its royalty-based accounting. As stated above, when 20th TV accounts to profit
27 participants using a royalty formula it is already excluding 80% of the revenues received. It is not
28 therefore permitted to also deduct actual expenses associated with that distribution because the

1 80% it is holding back is designed to account for those expenses. 20th TV, however, has done
2 exactly that with respect to certain home video distribution expenses and music clearance fees
3 that should be part of the home video expenses. This improper accounting has resulted in a
4 detriment to Plaintiffs of over \$1.5 million in Gross Receipts.

5 **5. Improper Overhead and Corporate Charges**

6 61. In addition to distribution expenses, 20th TV deducts distribution fees from all
7 revenues that it receives in connection with the distribution of the Series. These distribution fees
8 can be as high as 50% of the total revenues received and are designed to compensate 20th TV for
9 internal costs such as corporate overhead. Yet in addition to deducting these significant
10 distribution fees, 20th TV has also deducted general corporate costs including but not limited to
11 those associated with sales conventions, Fox's TV library and digital services, consumer and
12 market research, and Fox's information technology support services. By taking these additional
13 expenses on top of the direct distribution expenses and distribution fees that are already deducted,
14 Plaintiffs' have suffered a detriment of over \$1.1 million in Gross Receipts.

15 62. Moreover, with respect to production costs, 20th TV charges a 15% overhead fee
16 on all of the more than \$400 million in production costs that it has incurred to date. These
17 overhead fees are designed to provide 20th TV with compensation for its internal resources that
18 are used in connection with the production of the Series. Notwithstanding that 20th TV has
19 already collected over \$60 million in overhead related to the production of the Series, however,
20 20th TV has added to the Series Production Charges certain indirect and overhead costs not
21 directly attributable to the Series including but not limited to computer support, transparencials,
22 restocking fees, and refreshments. It has then charged a 15% overhead fee on the indirect
23 expenses that should have been subsumed in the overhead fee 20th TV was already taking on the
24 direct production charges for the Series. This practice of double-dipping has resulted in a
25 detriment to Plaintiffs of more than \$3.1 million in Gross Receipts.

26 **6. Insufficiently Supported Expenses**

27 63. 20th TV has a legal duty to justify all of the expenses that it deducts when
28 calculating Plaintiffs' profit participation. With respect to over \$100,000 in dubbing expenses,

1 however, it indicated during the Audit that it is unable to provide any support or justification. In
2 the absence of any support justifying that these expenses were in fact incurred in connection with
3 the distribution of the Series, Plaintiffs should not have these expenses deducted from Gross
4 Receipts when calculating their profit participation.

5 **7. Improperly Deducting Foreign Taxes**

6 64. Through the Audit Period, 20th TV had deducted approximately \$1.4 million from
7 Defined Gross Receipts as distribution expenses attributable to foreign taxes. Because Fox is able
8 to take a credit for these taxes on its United State income tax return, these are not moneys that
9 20th TV is ultimately out-of-pocket in connection with the Series, and therefore it should not
10 deduct them when calculating Plaintiffs' profit participation.

11 **8. Failure to Report Rebates from Media Buys**

12 65. 20th TV charged the Series with nearly \$900,000 in advertising, expenses and
13 accruals related to media buys in markets such as cable, interactive and radio but did not report
14 any credits in connection with these media buys. On information and belief, it is customary to
15 receive discounts, rebates and other credits based on volume purchases related to media buys. In
16 fact, 20th TV has reported rebates from vendors related to production costs, so it is even more
17 questionable that none were reported in connection with these large media buys.

18 **9. Improperly Charging Overhead on Distribution Expenses**

19 66. 20th TV has improperly classified certain distribution expenses as production
20 charges, thereby subjecting them to a 15% overhead fee that would not have been deducted from
21 Plaintiffs' Gross Receipts if these expenses had been properly accounted. For example, 20th TV
22 charged a 15% overhead fee on the \$172,205 of AMPTP dues that it paid. The 2007 Profits
23 Definition is clear that AMPTP dues are a distribution expense rather than a production cost, and
24 therefore should not be subject to an overhead fee. Through the Audit Period, Plaintiffs were
25 damaged by at least \$25,830 in overcharged expenses as a result of this accounting treatment.

26 **10. Improperly Accounting for Breakage**

27 67. 20th TV incurred tens of millions of dollars in additional production charges over
28 and above what had been budgeted for each season. During the Audit Period, FBC reimbursed

1 20th TV for some of those production overages, known as “breakage.” However, instead of
2 offsetting Production Charges with these reimbursements, 20th TV accounted for these amounts in
3 the manner most favorable to itself and detrimental to Plaintiffs. Specifically, 20th TV included
4 these breakage reimbursements in Production Charges and then charged a 15% overhead fee on
5 them even though 20th TV was not truly out-of-pocket on these expenses. This overhead resulted
6 in a detriment to Plaintiffs to be proven at trial but that Plaintiffs expect to exceed \$8 million.

7 **11. Improperly Accounting for Product Placement & Integration Revenues**

8 68. 20th TV accounts for product placement and integration revenues as if they are
9 merchandising receipts so that it can apply a 40% distribution fee to those revenues when
10 calculating Plaintiffs’ profits. There is nothing in the 2007 Profits Definition permitting this
11 accounting treatment. Moreover, 20th TV failed to follow through on its promise that it would
12 account for certain product integration revenues it received as an offset to Production Charges,
13 thereby reducing the amount of Production Charges for which the 15% overhead was applied.
14 Fox’s improper deduction of a 40% distribution fee coupled with its failure to offset Production
15 Charges as promised resulted in a detriment to Plaintiffs of over \$1.8 million in Gross Receipts.

16 **12. Underreported License Fees Due to Misclassification of Episodes**

17 69. 20th TV produced certain episodes during one season but then broadcast those
18 episodes as part of a subsequent season. Although the FBC/20th TV network license agreement
19 provided that episodic license fees must increase for successive seasons of the Series, when 20th
20 TV engaged in this practice of holding episodes until later seasons, it only credited Plaintiffs with
21 the license fees for the season in which the episode was produced. This is despite the fact that
22 when Fox licensed those episodes to third parties, 20th TV demanded from a third party the higher
23 license fee associated with the season in which a particular episode aired. This practice resulted in
24 a detriment to Plaintiffs in an amount to be proven at trial.

25 **13. 20th TV’s Failure to Negotiate the Profits Definitions in Good Faith**

26 70. Plaintiffs’ agreements entitle each of them to a good faith negotiation of their
27 profits definitions within 20th TV’s customary parameters for persons of Plaintiffs’ stature. With
28 respect to Reichs, 20th TV did not send its standard Profits Definition until 2007, three years after

1 her initial deal had been executed. Upon sending the 2007 Profits Definition, 20th TV did not
2 engage in any negotiation with Reichs whatsoever, let alone a good faith negotiation. With
3 respect to Deschanel and Boreanaz, 20th TV has never even sent them a copy of its standard
4 Profits Definition, and has therefore not negotiated any of its terms at all. Plaintiffs are informed
5 and believe that if 20th TV had engaged in the contractually required good faith negotiation with
6 each Plaintiff, he or she would have received significant improvements to that definition such that
7 his or her eventual profit participation payments would have been dramatically increased.

8 **14. Improperly Charged Overhead on Unrecouped Guarantees**

9 71. When calculating Reichs' profit participation payments, 20th TV charged a 15%
10 overhead fee on more than \$3 million of unrecouped guarantees and overhead because these
11 expenses were included as Production Charges. As stated above, Reichs' 2004 Agreement entitles
12 her to a Profits Definition that is negotiated in good faith. The fact that Plaintiffs Deschanel and
13 Boreanaz, both of whom are also producers on the Series as is Reichs, were not accounted to in
14 this manner is evidence that Reichs was not treated consistent with the terms of her agreements
15 and should not be subject to the 15% overhead fee applied to these \$3 million in expenses.

16 **15. Failure to Consult Regarding Distribution**

17 72. The 2012 Agreements provide that "[20th TV] shall accord good faith (meaningful)
18 consultation to [Deschanel and Boreanaz] with respect to the initial domestic off-network sales
19 plan, subject to the reasonable availability and reasonable response time of [Deschanel and
20 Boreanaz]." 20th TV nevertheless failed to consult with Deschanel and Boreanaz about the initial
21 domestic off-network sales plan, and if it had done so, Deschanel and Boreanaz are informed and
22 believe that the consultation would have resulted in higher license fees to 20th TV, which would
23 have resulted in higher profit participation payments to Deschanel and Boreanaz.

24 **VI. DEFENDANTS' FRAUDULENT CONDUCT**

25 73. In or around May 2009, 20th TV and FBC approached Plaintiffs and the other
26 profit participants on *Bones* and informed them that unless each and every one of them agreed
27 that FBC could pay 20th TV reduced episodic license fees for Seasons 5 and 6 of *Bones* relative to
28 the amounts that FBC had previously agreed to pay, FBC would not pick up its option on the

1 Series, thereby preventing them from receiving the additional fixed and contingent compensation
2 that they would earn only if the Series continued. 20th TV then prepared an "Agreement and
3 Release" memorializing this, which contained signature lines for each and every profit participant
4 on the Series. Believing 20th TV's representations to be true at the time they were made, and
5 fearful that Season 5 would not be picked up unless she and all the other profit participants signed
6 this 2009 Release, Reichs executed it. It was not until years later during the Plaintiffs' joint
7 attempts to resolve the Audit Claims with 20th TV that Reichs learned that Deschanel and
8 Boreanaz had in fact not signed the 2009 Release and that 20th TV had falsely represented to
9 Reichs that producing Seasons 5 and 6 of *Bones* had been contingent upon *all* *Bones* profit
10 participants agreeing to the reduced license fees in the 2009 Release. Moreover, Deschanel and
11 Boreanaz learned during the Audit that even though they had refused to sign the 2009 Release
12 because the license fees Fox had proposed for Season 5 and 6 were well below fair market value,
13 20th TV still credited them with those same below-market license fees.

14 74. In addition to these affirmative misrepresentations in connection with the 2009
15 Release, 20th TV took its bad acts one step further and simultaneously concealed additional
16 material information that, if known by Reichs, would have ensured she did not sign the 2009
17 Release. In particular, Fox suppressed the fact that immediately after obtaining Reichs' signature
18 on the 2009 Release, 20th TV intended to *further* harm her by amending other terms of the
19 existing FBC/20th TV network license agreement to her detriment.

20 75. Indeed, as Plaintiffs learned during the Audit, the very same day that 20th TV
21 obtained Reichs' signature on the 2009 Release, it entered into a "sweetheart" deal with FBC to
22 amend the Nielsen ratings bonus provision in their network license agreement for *Bones*. The
23 original formula was based on how Nielsen *ranked* the Series relative to other primetime shows
24 and provided for a minimum of \$100,000 per episode for each eligible episode, but the
25 amendment replaced this with a less favorable bonus structure tied purely to the Series' Nielsen
26 *ratings*. The new ratings bonus structure considered only the total number of viewers and did not
27 make any adjustments based on how well *Bones* performed relative to its competition. Under this
28 new structure, instead of owing 20th TV a minimum of \$100,000 per eligible episode, FBC did

1 not have to pay any money in connection with the majority of the episodes, and in fact paid only a
2 fraction of what would have been due under the original agreement. Yet even though FBC and
3 20th TV were aware that they were devaluing the network license agreement to the detriment of
4 plaintiff Reichs and the other profit participants on the very same day that they were asking them
5 to accept reduced network license fees, Fox concealed this material fact from Plaintiffs.

6 76. Moreover, FBC ensured it would be exceedingly difficult for 20th TV and
7 therefore the Plaintiffs to obtain these bonuses under the new structure by subjecting *Bones* to the
8 fate of perpetual migration throughout its primetime schedule. Notably, *Bones* is the only drama
9 in the history of FBC that has migrated to so many different timeslots that it has aired on each
10 weeknight during its 11-year run. Just as the day of the week kept migrating, so did its broadcast
11 time, with FBC sometimes airing it at 8 p.m. and at other times airing it at 9 p.m. In some
12 instances, such as Season 7, the weekly day and time for *Bones* were changed three times during
13 the course of a single broadcast season. This decision by FBC to constantly migrate the Series
14 likely led to it having lower viewership, which ultimately impacted the Nielsen bonuses the show
15 would earn under the new *ratings* bonus structure that FBC and 20th TV conspired to employ and
16 in fact did employ.

17 77. Then in October 2009, at the start of Season 5 when certain "deficit
18 reimbursement" payments that were part of the original network license agreement between 20th
19 TV and FBC were due to be paid to 20th TV, the sister companies once again amended their
20 agreement, this time by eliminating entirely 20th TV's entitlement to these payments that ranged
21 from \$250,000-500,000 per episode for the 84 episodes in Seasons 1 through 4 of the Series.
22 Inexplicably, as the show continued and grew more and more successful, 20th TV negotiated with
23 FBC to *forego* payments to which it was already entitled. And it did so without receiving any
24 consideration in return, resulting in a detriment to Plaintiffs of at least \$10.375 million in Gross
25 Receipts, and possibly much more.

1 **FIRST CAUSE OF ACTION**

2 **Breach of Contract**

3 **(By All Plaintiffs Against Defendant 20th TV)**

4 78. Plaintiffs incorporate by reference and reallege each and every allegation in
5 paragraph 1 through 77 of this Complaint, inclusive, as though fully set forth herein.

6 79. Plaintiffs have performed all conditions, covenants, and promises required to be
7 performed by them in accordance with the terms of their respective agreements and the 2007
8 Profits Definition provided by 20th TV to Reichs.

9 80. All conditions required for Defendants' performance of the conditions, covenants,
10 and promises required to be performed by them in accordance with the terms of the agreements
11 and the 2007 Profits Definition have occurred.

12 81. As detailed above, Defendants have breached the agreements and the 2007 Profits
13 Definition by, among other things, failing to pay monies due to Plaintiffs pursuant to Fox's
14 Television Definition of Defined Modified Adjusted Gross Receipts.

15 82. Defendants have further breached the agreements and the 2007 Profits Definition
16 by failing to provide Plaintiffs' auditor with documents necessary to allow the auditor to perform
17 its audit of 20th TV accounts as required by the agreements.

18 83. As a direct and proximate result of Defendants' breaches of the agreements and the
19 2007 Profits Definition, Plaintiffs have suffered, and will continue to suffer, monetary damages in
20 an amount to be proven at trial.

21 **SECOND CAUSE OF ACTION**

22 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

23 **(By All Plaintiffs Against 20th TV)**

24 84. Plaintiffs incorporate by reference and reallege each and every allegation in
25 paragraph 1 through 77 of this Complaint, inclusive, as though fully set forth herein.

26 85. Plaintiffs have performed all conditions, covenants, and promises required to be
27 performed by them in accordance with the terms of their respective agreements and the 2007
28 Profits Definition.

1 86. All conditions required for Defendants' performance of the conditions, covenants,
2 and promises required to be performed by them in accordance with the terms of the agreements
3 and the 2007 Profits Definition have occurred.

4 87. Defendants breached the implied covenant of good faith and fair dealing by
5 unfairly interfering with Plaintiffs' right to receive the benefits of the their respective agreements
6 and the 2007 Profits Definition by, among other things:

- 7 • Failing to properly allocate revenues earned from agreements in which *Bones* was
8 licensed in packages with other Fox television series and films;
- 9 • Failing to properly allocate to *Bones* revenues earned from new media, including
10 but not limited to those earned from Netflix and Hulu;
- 11 • Misclassifying certain revenues and expenses to the detriment of Plaintiffs; and
- 12 • Improperly accounting for home video and electronic sell-through receipts to the
13 detriment of Plaintiffs.

14 88. As a direct and proximate result of Defendants' breaches of the implied covenant
15 of good faith and fair dealing, Plaintiffs have suffered monetary damages in an amount to be
16 proven at trial.

17 **THIRD CAUSE OF ACTION**

18 **Fraudulent Inducement per Cal. Civ. Code § 1572**

19 **(By Plaintiff Reichs Against All Defendants)**

20 89. Plaintiffs incorporate by reference and reallege each and every allegation in
21 paragraph 1 through 77 of this Complaint, inclusive, as though fully set forth herein.

22 90. As set forth above, in May 2009, 20th TV and FBC approached Plaintiffs and the
23 other profit participants on *Bones* and informed them that unless each and every one of them
24 agreed that FBC could pay 20th TV significantly reduced episodic license fees for Seasons 5 and 6
25 of *Bones* relative to the amounts stated in the FBC/20th TV network license agreement, FBC
26 would not pick up its option on the Series, thereby preventing them from receiving the additional
27 fixed and contingent compensation that they would earn only if the Series continued. 20th TV then
28 prepared an "Agreement and Release" memorializing this, which contained signature lines for

1 each and every profit participant on the Series. Believing 20th TV's representations to be true at
2 the time they were made, and fearful that Season 5 would not be picked up unless she and all the
3 other profit participants signed this 2009 Release, Reichs executed it. It was not until years later
4 during the Plaintiffs' joint attempts to resolve the Audit Claims with 20th TV that Reichs learned
5 that Deschanel and Boreanaz had in fact not entered into the 2009 Release and 20th TV had
6 falsely represented to Reichs that producing Seasons 5 and 6 of *Bones* had been contingent upon
7 all *Bones* profit participants agreeing to the reduced license fees in the 2009 Release.

8 91. Defendants knew their representations to Reichs were false at the time they were
9 made, *i.e.* that Defendants would produce and broadcast Season 5 of *Bones* regardless of whether
10 all profit participants signed the 2009 Release, which is in fact what occurred. Defendants
11 intentionally made these false representations to Reichs to induce her to enter into the 2009
12 Release.

13 92. Plaintiff Reichs actually and justifiably relied on Defendants' false material
14 misrepresentations and, consequently, agreed to enter into the 2009 Release because Fox
15 threatened to cancel *Bones* if she did not acquiesce, thereby stripping her of other fixed and
16 contingent compensation that she would have otherwise been due under the 2004 Reichs
17 Agreement and the 2007 Profits Definition.

18 **FOURTH CAUSE OF ACTION**

19 **Fraudulent Concealment per Cal. Civ. Code § 1572**

20 **(By Plaintiff Reichs Against All Defendants)**

21 93. Plaintiffs incorporate by reference and reallege each and every allegation in
22 paragraph 1 through 77 and paragraph 90 of this Complaint, inclusive, as though fully set forth
23 herein.

24 94. At the time Fox entered into the 2009 Release, FBC and 20th TV concealed their
25 intent to further amend the network license agreement between 20th TV and sister-company FBC
26 to the detriment of Plaintiffs. The very same day that 20th TV induced Reichs to enter into the
27 2009 Release, FBC and 20th TV amended their network license agreement to change the Nielsen
28 bonus structure from a rankings structure that was more favorable to profit participants such as

1 Reichs to a ratings structure that was less favorable to Reichs. In addition, Fox concealed the
2 material fact that it would be exceedingly difficult to obtain these Nielsen ratings bonuses under
3 the new structure because it intended to broadcast *Bones* at different time periods on all five
4 weekdays thus making it more difficult for viewers to locate the show and thus to achieve
5 sufficient Nielsen ratings to achieve bonuses.

6 95. The facts concealed by Defendants were material and Fox concealed such facts
7 with the intent to induce Reichs to enter into the 2009 Release.

8 96. At the time Fox concealed these material facts, and at the time Reichs took the
9 actions herein alleged, Reichs was ignorant of the facts concealed, and in reasonable reliance on
10 these representations, Reichs was induced to and did enter into the 2009 Release. Had Reichs
11 know the actual facts, and had Defendants not concealed material facts, she would not have taken
12 such actions. Reichs' reliance on Fox's concealment was justified because Reichs could not, in
13 the exercise of reasonable diligence, have discovered the actual facts.

14 97. As a direct and proximate result of the fraudulent concealment by Fox, Reichs has
15 been damaged in an amount to be proven at trial. When Reichs has ascertained the full value of
16 her damages, she will seek leave of the Court to amend this Complaint accordingly.

17 98. Reichs is informed and believes and thereon alleges that Defendants, in doing the
18 things alleged herein, acted willfully, maliciously, oppressively and with full knowledge of the
19 adverse effects of their actions on Reichs, and with willful and deliberate disregard to the
20 consequences to Reichs, such as to constitute oppression, fraud, and/or malice. As a direct result
21 of their fraudulent, willful and malicious conduct, Reichs is entitled to exemplary and punitive
22 damages pursuant to Civil Code § 3294 in an amount to be determined by the Court at trial.

23 **FIFTH CAUSE OF ACTION**

24 **Inducing Breach of Contract**

25 **(By All Plaintiffs Against 21st Fox, FEG, FBC, and Does 1-20)**

26 99. Plaintiffs incorporate by reference and reallege each and every allegation in
27 paragraph 1 through 77 of this Complaint, inclusive, as though fully set forth herein.

1 100. 20th TV and one or more Plaintiffs were parties to the 2004 Reichs Agreement and
2 2012 Actor Agreements, which are valid and binding contracts.

3 101. 20th TV and one or more Plaintiffs were parties to the 2007 Profits Definition,
4 portions of which are valid and binding contracts.

5 102. At all relevant times, defendants 21st Fox, FEG, FBC, and Does 1-20 were aware
6 of the 2004 Reichs Agreement, the 2007 Profits definition, and the 2012 Actor Agreements and
7 their terms.

8 103. As set forth above, 20th TV breached the 2004 Reichs Agreement, the 2012 Actor
9 Agreements, and the binding portions of the 2007 Profits Definition, including their implied
10 covenants of good faith and fair dealing, in various ways.

11 104. Defendants 21st Fox, FEG, FBC, and Does 1-20 intended to influence, direct, or
12 cause 20th TV to commit the above-described breaches because these defendants knew they
13 would benefit from such breaches. Among other benefits, Defendants 21st Fox, FEG, FBC, and
14 Does 1-20 benefited by paying lower license fees for the rights to broadcast the Series, thus
15 decreasing costs and increasing profits for FBC and ultimately for 21st Fox as a result of denying
16 Plaintiffs their proper share of revenues from the Series.

17 105. Through the conduct described above, Defendants 21st Fox, FEG, FBC, and Does
18 1-20 caused 20th TV to breach the 2004 Reichs Agreement, the 2012 Actor Agreements, and the
19 binding portions of the 2007 Profits Definition as set forth above. But for the influence or
20 direction of these defendants, 20th TV would have had no incentive, basis, and/or ability to
21 collude with these defendants; rather, absent such collusion, the primary goal of 20th TV would
22 have been to maximize its revenues and profits from the Series and obtain the highest-possible
23 license fees for the Series.

24 106. Through their conduct, Defendants 21st Fox, FEG, FBC, and Does 1-20 caused
25 damage to Plaintiffs by inducing acts that reduced 20th TV's Gross Receipts and ultimately
26 Plaintiffs' profit participation in connection with the Series, in an amount to be proven at trial.

27 107. The conduct of Defendants 21st Fox, FEG, FBC, and Does 1-20 was a substantial
28 factor in causing Plaintiffs' harm.

1 108. In engaging in the misconduct alleged herein, Defendants 21st Fox, FEG, FBC, and
2 Does 1-20 have acted with malice, oppression, or fraud, and in willful disregard of Plaintiffs'
3 rights and interests, thus entitling Plaintiffs to an award of punitive damages in an amount
4 appropriate to punish or make an example of Defendants 21st Fox, FEG, FBC, and Does 1-20,
5 pursuant to Civil Code § 3294.

6 **SIXTH CAUSE OF ACTION**

7 **Intentional Interference with Contract**

8 **(By All Plaintiffs Against 21st Fox, FEG, FBC, and Does 1-20)**

9 109. Plaintiffs incorporate by reference and reallege each and every allegation in
10 paragraph 1 through 77 of this Complaint, inclusive, as though fully set forth herein.

11 110. 20th TV and one or more Plaintiffs were parties to the 2004 Reichs Agreement and
12 2012 Actor Agreements, which are valid and binding contracts.

13 111. 20th TV and one or more Plaintiffs were parties to the 2007 Profits Definition,
14 portions of which are valid and binding contracts.

15 112. At all relevant times, defendants 21st Fox, FEG, FBC, and Does 1-20 were aware
16 of the 2004 Reichs Agreement, the 2007 Profits Definition, and the 2012 Actor Agreements and
17 their terms.

18 113. Defendants 21st Fox, FEG, FBC, and Does 1-20 collaborated and/or participated
19 with 20th TV in the misconduct described above because these defendants knew they would
20 benefit from such misconduct. Among other benefits, Defendants 21st Fox and FBC benefited by
21 paying lower license fees for the rights to broadcast the Series, thus decreasing costs and
22 increasing profits for FBC and ultimately for 21st Fox as a result of denying Plaintiffs their proper
23 share of revenues from the Series.

24 114. Through the conduct described above, Defendants 21st Fox, FEG, FBC, and Does
25 1-20 intended to disrupt or prevent the performance by 20th TV of the 2004 Reichs Agreement,
26 the 2012 Actor Agreements, and the binding portions of the 2007 Profits Definition as set forth
27 above, and did disrupt or prevent that performance.

1 115. Through their conduct, Defendants 21st Fox, FEG, FBC, and Does 1-20 caused
2 damaged to Plaintiffs by collaborating and/or participating in acts that reduced 20th TV's Gross
3 Receipts and ultimately Plaintiffs' profit participation in connection with the Series, in an amount
4 to be proven at trial.

5 116. The conduct of Defendants 21st Fox, FEG, FBC, and Does 1-20 was a substantial
6 factor in causing Plaintiffs' harm.

7 117. In engaging in the misconduct alleged herein, Defendants 21st Fox, FEG, FBC, and
8 Does 1-20 have acted with malice, oppression, or fraud, and in willful disregard of Plaintiffs'
9 rights and interests, thus entitling Plaintiffs to an award of punitive damages in an amount
10 appropriate to punish or make an example of Defendants 21st Fox, FEG, FBC, and Does 1-20,
11 pursuant to Civil Code § 3294.

12 **SEVENTH CAUSE OF ACTION**

13 **Accounting**

14 **(By All Plaintiffs Against All Defendants)**

15 118. Plaintiffs incorporate by reference and reallege each and every allegation in
16 paragraph 1 through 77 of this Complaint, inclusive, as though fully set forth herein.

17 119. A relationship exists between Plaintiffs on the one hand and Defendants on the
18 other hand for which an accounting of Defendants' books and records is appropriate.

19 120. Plaintiffs are informed and believe and thereon allege that Fox has derived and
20 received significant income, profit and other benefits from the aforementioned improper and
21 fraudulent accounting practices. Plaintiffs are entitled to a full and accurate accounting of all
22 proceeds generated from, by or in connection with the distribution, licensing and/or other
23 exploitation of the Series and its components as well as the fees and expenses incurred by 20th TV
24 in connection with the production, distribution and exploitation of the Series and its components.

25 121. The amount of money due to Plaintiffs is unknown and cannot be reasonably
26 ascertained without a full and complete accounting of Defendants' books and records. Defendants
27 have failed and refused to supply the information and documents necessary to complete that audit.
28 Due to Plaintiffs' exclusion from exercising any control or management over the distribution,

1 licensing and other exploitation of the Series and the collection, reporting and accounting of
2 revenues generated from such exploitation and the complex nature of the accounts of such
3 exploitation, it is impractical to ascertain a fixed sum that is currently owed to Plaintiffs.
4 Accordingly, the full amount due and owing to Plaintiffs can only be determined pursuant to a
5 full and accurate accounting of all proceeds and expenses generated in connection with the
6 production, distribution, licensing and other exploitation of the Series that Plaintiffs seek herein.

7 122. Plaintiffs also pray for the Court to impose a constructive trust on all moneys
8 wrongfully withheld by Defendants, in accordance with common law and California Civil Code
9 §§ 2223-2224, for the benefit of Plaintiffs and Plaintiffs' interests.

10 EIGHTH CAUSE OF ACTION

11 Declaratory Relief

12 (By All Plaintiffs Against 20th TV)

13 123. Plaintiffs incorporate by reference and reallege each and every allegation in
14 paragraph 1 through 77 of this Complaint, inclusive, as though fully set forth herein.

15 124. An actual controversy has arisen and now exists between Reichs and 20th TV
16 regarding the enforceability of the 2009 Release. Reichs is informed and believes that 20th TV
17 contends that Reichs is bound by the terms of the 2009 Release, and that Reichs is not entitled to
18 raise claims associated with the improperly reduced network license fees reported to her in
19 connection with Season 5 and 6 of the Series. Reichs, on the other hand, contends that she was
20 fraudulently induced to enter into the 2009 Release, therefore rendering it null, void, and
21 unenforceable. These issues have been raised with 20th TV who disagrees and thus the parties
22 have a dispute concerning their respective rights and obligations, if any, under the 2009 Release.

23 125. Plaintiffs are further informed and believe that an actual controversy has arisen
24 and now exists between Plaintiffs and 20th TV regarding the allocation of certain license fees that
25 are used to determine Plaintiffs' profit participation under the agreements. Plaintiffs are informed
26 and believe that 20th TV is misallocating and/or underreporting the revenues for the Series in
27 many of self-dealing domestic and international agreements governing the distribution, licensing,
28 or other exploitation of *Bones*. Plaintiffs, on the other hand, contend that pursuant to their

1 agreements, 20th TV must allocate and report revenues consistent with the monetary terms of the
2 licenses 20th TV enters into with third parties for comparable programs.

3 126. Plaintiffs are further informed and believe that an actual controversy has arisen
4 and exists between Plaintiffs and 20th TV regarding their respective rights and obligations under
5 the parties' agreements with respect to the interpretation of provisions of the parties' agreement
6 related to the calculation, reporting, and payment of Plaintiffs profit interests in the Series.
7 Plaintiffs are informed and believe that 20th TV contends otherwise.

8 127. Therefore, Plaintiffs request that this Court make and enter its binding judicial
9 declarations in accordance with Plaintiffs' contentions set forth above. These declarations are
10 both necessary and proper at this time under the circumstances in that, among other things, the
11 interests of judicial economy and substantial justice will be served thereby.

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1. For monetary damages in an amount to be proven at trial;
2. For a judicial declaration of the parties' contractual rights and duties in connection with *Bones*, their agreements concerning *Bones*, the 2007 Profits Definition, and the 2009 Release alleged herein;
3. For an accounting under Court supervision of the profits of the Series and the amounts due and payable to Plaintiffs in accordance with the agreements alleged herein;
4. For the Court to impose a constructive trust on the moneys wrongfully withheld;
5. For rescission of the 2009 Release;
6. For an award of punitive damages in an amount to be proven at trial;
7. That Plaintiffs be awarded all pre-judgment interest allowable by law;
8. That Plaintiffs be awarded their outside attorneys' fees and costs; and
9. For such further relief as the Court may deem just and proper.

Dated: November 30, 2015

By: 

Attorneys for Plaintiffs

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 At the time of service, I was over 18 years of age and **not a party to this action**. I am
4 employed in the County of Los Angeles, State of California. My business address is 355 South
Grand Avenue, Thirty-Fifth Floor, Los Angeles, CA 90071-1560.

5 On May 13, 2016, I served true copies of the following document(s) described as
6 **STIPULATION REGARDING CLAIMS IN ARBITRATION** on the interested parties in this
action as follows:

7 **SEE ATTACHED SERVICE LIST**

8 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document
9 to be sent from e-mail address - rhonda.clarke@mto.com - to the persons at the e-mail addresses
10 listed in the Service List. I did not receive, within a reasonable time after the transmission, any
electronic message or other indication that the transmission was unsuccessful.

11 **BY FEDEX:** I enclosed said document(s) in an envelope or package provided by FedEx
12 and addressed to the persons at the addresses listed in the Service List. I placed the envelope or
package for collection and overnight delivery at an office or a regularly utilized drop box of FedEx
or delivered such document(s) to a courier or driver authorized by FedEx to receive documents.

13 I declare under penalty of perjury under the laws of the State of California that the
14 foregoing is true and correct.

15 Executed on May 13, 2016, at Los Angeles, California.

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17 _____
Rhonda Clarke
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SERVICE LIST

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nsoltman@kwikalaw.com	

Exhibit 10

JAMS ARBITRATION CASE REFERENCE NO. 1220052735

TWENTIETH CENTURY FOX FILM CORPORATION, a Delaware corporation;
FOX ENTERTAINMENT GROUP, LLC, a Delaware limited liability corporation;
TWENTY-FIRST CENTURY FOX, INC., a Delaware corporation; and FOX BROADCASTING COMPANY, a Delaware corporation,

Claimants,

vs.

WARK ENTERTAINMENT, INC. f/s/o
BARRY JOSEPHSON; TEMPERANCE
BRENNAN, L.P. f/s/o KATHLEEN REICHS;
SNOOKER DOODLE PRODUCTIONS, INC.
f/s/o EMILY DESCHANEL; and BERTHA
BLUE, INC. f/s/o DAVID BOREANAZ,

Respondents.

WARK ENTERTAINMNET, INC. f/s/o
BARRY JOSEPHSON; TEMPERANCE
BRENNAN, L.P. f/s/o KATHLEEN REICHS;
SNOOKER DOODLE PRODUCTIONS, INC.
f/s/o EMILY DESCHANEL; and BERTHA
BLUE, INC. f/s/o DAVID BOREANAZ,

Counter-Claimants,

vs.

TWENTIETH CENTURY FOX FILM CORPORATION, a Delaware corporation;
FOX ENTERTAINMENT GROUP, LLC, a Delaware limited liability corporation;
TWENTY-FIRST CENTURY FOX, INC., a Delaware corporation; and FOX BROADCASTING COMPANY, a Delaware corporation,

Counter-Respondents.

SCHEDULING ORDER NO. 2

An Arbitration Management Conference was conducted in this matter on May 16, 2016 pursuant to written notice. During the course of the telephonic conference, the Arbitrator inquired of all counsel regarding the rules under which the arbitration shall be conducted. All counsel agreed that the arbitration shall be conducted under the JAMS comprehensive rules as outlined below. The Arbitrator further inquired about the parties' discovery plans. The parties indicated that they have begun discussing a discovery schedule. The parties also indicated that they have begun discussing a protective order. With that procedural background noted, the following orders are hereby made and issued.

1. Rules:

Pursuant to an oral stipulation entered into before the Arbitrator during the course of the telephonic management conference, the Arbitration shall be conducted in accordance with the JAMS comprehensive rules. Rule 17 disclosures shall be made concurrently with documents produced in response to the parties' specific requests.

2. Discovery Schedule & Protective Order:

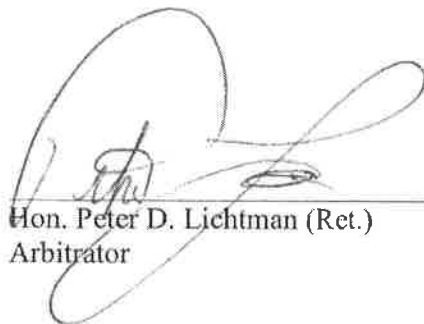
Pursuant to an oral stipulation entered into before the Arbitrator during the course of the telephonic management conference, all counsel for the parties are to meet and confer within 7 days with a mandate to exercise all best efforts in attempting to reach 1) an agreed upon schedule for serving, and resolving disputes concerning, document requests and 2) a protective order for this Arbitration.

Counsel for the parties are to submit to the Arbitrator no later than May 23, 2016: 1) an agreed upon proposed discovery schedule and 2) a proposed protective order.

A further telephonic conference is hereby ordered for August 1, 2016 at 9:30 A.M. The arbitrator's case manager will notify all counsel of the call in number and passcode.

No further orders are issued at this time.

DATED: May 17, 2016



Hon. Peter D. Lichtman (Ret.)
Arbitrator

PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: Twentieth Century Fox Film Corporation et al. vs. Wark Entertainment, Inc. fso Barry Josephson et al.
Reference No. 1220052735

I, Marilyn Anthony, not a party to the within action, hereby declare that on May 17, 2016, I served the attached SCHEDULING ORDER NO. 2 on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at Los Angeles, CALIFORNIA, addressed as follows:

Glenn D. Pomerantz Esq.
Mr. Anjan Choudhury
Ms. Allyson R. Bennett
Munger, Tolles & Olson, LLP
355 S. Grand Ave.
Suite 3500
Los Angeles, CA 90071
Phone: 213-683-9100
Glenn.Pomerantz@mto.com
Anjan.Choudhury@mto.com
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Parties Represented:

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Fox Entertainment Group, LLC
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Twenty-First Century Fox, Inc.

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Fox Entertainment Group, LLC
Twentieth Century Fox Film Corp.
Twenty-First Century Fox, Inc.

I declare under penalty of perjury the foregoing to be true and correct. Executed at Los Angeles,
CALIFORNIA on May 17, 2016.


Marilyn Anthony
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Exhibit 11



JAMS Comprehensive Arbitration Rules & Procedures

Effective July 1, 2014

We understand that there is a lot on the line in arbitration. We know attorneys count on JAMS to provide highly skilled arbitrators who use JAMS Managed Arbitration Process to save time and money. JAMS offers efficiency, speed, and results. If another arbitration provider was written into your contract, call an experienced JAMS Case Manager to discuss having your case administered by JAMS.

Since 2010, JAMS has offered **Optional Expedited Arbitration Procedures**, whereby parties can choose a process that limits depositions, document requests and e-discovery. When parties utilizing JAMS Comprehensive Arbitration Rules elect to use these procedures, they agree to the voluntary and informal exchange of all non-privileged documents and other information relevant to the dispute. See Comprehensive Rules **16.1** and **16.2**.

Download JAMS Comprehensive Arbitration Rules

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A spanish version may be downloaded [here](#). A summary of the July 1, 2014 revisions may be found [here](#).

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Rule 1. Scope of Rules

(a) The JAMS Comprehensive Arbitration Rules and Procedures ("Rules") govern binding Arbitrations of disputes or claims that are administered by JAMS and in which the Parties agree to use these Rules or, in the absence of such agreement, any disputed claim or counterclaim that exceeds \$250,000, not including interest or attorneys' fees, unless other Rules are prescribed.

(b) The Parties shall be deemed to have made these Rules a part of their Arbitration agreement ("Agreement") whenever they have provided for Arbitration by JAMS under its Comprehensive Rules or for Arbitration by JAMS without specifying any particular JAMS Rules and the disputes or claims meet the criteria of the first paragraph of this Rule.

(c) The authority and duties of JAMS as prescribed in the Agreement of the Parties and in these Rules shall be carried out by the JAMS National Arbitration Committee ("NAC") or the office of JAMS General Counsel or their designees.

(d) JAMS may, in its discretion, assign the administration of an Arbitration to any of its Resolution Centers.

(e) The term "Party" as used in these Rules includes Parties to the Arbitration and their counsel or representatives.

(f) "Electronic filing" (e-file) means the electronic transmission of documents to and from JAMS and other Parties for the purpose of filing via the Internet. "Electronic service" (e-service) means the electronic transmission of documents via JAMS Electronic Filing System to a Party, attorney or representative under these Rules.

Rule 2. Party Self-Determination and Emergency Relief Procedures

(a) The Parties may agree on any procedures not specified herein or in lieu of these Rules that are consistent with the applicable law and JAMS policies (including, without limitation, Rules 15(i), 30 and 31). The Parties shall promptly notify JAMS of any such Party-agreed procedures and shall confirm such procedures in writing. The Party-agreed procedures shall be enforceable as if contained in these Rules.

(b) When an Arbitration Agreement provides that the Arbitration will be non-administered or administered by an entity other than JAMS and/or conducted in accordance with rules other than JAMS Rules, the Parties may subsequently agree to modify that Agreement to provide that the Arbitration will be administered by JAMS and/or conducted in accordance with JAMS Rules.

(c) Emergency Relief Procedures. These Emergency Relief Procedures are available in Arbitrations filed and served after July 1, 2014, and where not otherwise prohibited by law. Parties may agree to opt out of these Procedures in their Arbitration Agreement or by subsequent written agreement.

(i) A Party in need of emergency relief prior to the appointment of an Arbitrator may notify JAMS and all other Parties in writing of the relief sought and the basis for an Award of such relief. This Notice shall include an explanation of why such relief is needed on an expedited basis. Such Notice shall be given by facsimile, email or personal delivery. The Notice must include a statement certifying that all other Parties have been notified. If all other Parties have not been notified, the Notice shall include an explanation of the efforts made to notify such Parties.

(ii) JAMS shall promptly appoint an Emergency Arbitrator to rule on the emergency request. In most cases the appointment of an Emergency Arbitrator will be done within 24 hours of receipt of the request. The Emergency Arbitrator shall promptly disclose any circumstance likely, on the basis disclosed in the application, to affect the Arbitrator's ability to be impartial or independent. Any challenge to the appointment of the Emergency Arbitrator shall be made within 24 hours of the disclosures by the Emergency Arbitrator. JAMS will promptly review and decide any such challenge. JAMS' decision will be final.

(iii) Within two business days, or as soon as practicable thereafter, the Emergency Arbitrator shall establish a schedule for the consideration of the request for emergency relief. The schedule shall provide a reasonable opportunity for all Parties to be heard taking into account the nature of the relief sought. The Emergency Arbitrator has the authority to rule on his or her own jurisdiction and shall resolve any disputes with respect to the request for emergency relief.

(iv) The Emergency Arbitrator shall determine whether the Party seeking emergency relief has shown that immediate and irreparable loss or damage will result in the absence of emergency relief and whether the requesting Party is entitled to such relief. The Emergency Arbitrator shall enter an order or Award granting or denying the relief, as the case may be, and stating the reasons therefor.

(v) Any request to modify the Emergency Arbitrator's order or Award must be based on changed circumstances and may be made to the Emergency Arbitrator until such time as an Arbitrator or Arbitrators are appointed in accordance with the Parties' Agreement and JAMS' usual procedures. Thereafter, any request related to the relief granted or denied by the Emergency Arbitrator shall be determined by the Arbitrator(s) appointed in accordance with the Parties' Agreement and JAMS' usual procedures.

(vi) At the Emergency Arbitrator's discretion, any interim Award of emergency relief may be conditioned on the provision of adequate security by the Party seeking such relief.

Rule 3. Amendment of Rules

JAMS may amend these Rules without notice. The Rules in effect on the date of the commencement of an Arbitration (as defined in Rule 5) shall apply to that Arbitration, unless the Parties have agreed upon another version of the Rules.

Rule 4. Conflict with Law

If any of these Rules, or modification of these Rules agreed to by the Parties, is determined to be in conflict with a provision of applicable law, the provision of law will govern over the Rule in conflict, and no other Rule will be affected.

Rule 5. Commencing an Arbitration

(a) The Arbitration is deemed commenced when JAMS issues a Commencement Letter based upon the existence of one of the following:

- (i) A post-dispute Arbitration Agreement fully executed by all Parties specifying JAMS administration or use of any JAMS Rules; or
 - (ii) A pre-dispute written contractual provision requiring the Parties to arbitrate the dispute or claim and specifying JAMS administration or use of any JAMS Rules or that the Parties agree shall be administered by JAMS; or
 - (iii) A written confirmation of an oral agreement of all Parties to participate in an Arbitration administered by JAMS or conducted pursuant to any JAMS Rules; or
 - (iv) The Respondent's failure to timely object to JAMS administration; or
 - (v) A copy of a court order compelling Arbitration at JAMS.
- (b) The issuance of the Commencement Letter confirms that requirements for commencement have been met, that JAMS has received all payments required under the applicable fee schedule and that the Claimant has provided JAMS with contact information for all Parties along with evidence that the Demand for Arbitration has been served on all Parties.
- (c) If a Party that is obligated to arbitrate in accordance with subparagraph (a) of this Rule fails to agree to participate in the Arbitration process, JAMS shall confirm in writing that Party's failure to respond or participate, and, pursuant to Rule 22(j), the Arbitrator, once appointed, shall schedule, and provide appropriate notice of, a Hearing or other opportunity for the Party demanding the Arbitration to demonstrate its entitlement to relief.
- (d) The date of commencement of the Arbitration is the date of the Commencement Letter but is not intended to be applicable to any legal requirements such as the statute of limitations, any contractual limitations period or claims notice requirements. The term "commencement," as used in this Rule, is intended only to pertain to the operation of this and other Rules (such as Rules 3, 13(a), 17(a) and 31(a)).

Rule 6. Preliminary and Administrative Matters

- (a) JAMS may convene, or the Parties may request, administrative conferences to discuss any procedural matter relating to the administration of the Arbitration.
- (b) If no Arbitrator has yet been appointed, at the request of a Party and in the absence of Party agreement, JAMS may determine the location of the Hearing, subject to Arbitrator review. In determining the location of the Hearing, such factors as the subject matter of the dispute, the convenience of the Parties and witnesses, and the relative resources of the Parties shall be considered.
- (c) If, at any time, any Party has failed to pay fees or expenses in full, JAMS may order the suspension or termination of the proceedings. JAMS may so inform the Parties in order that one of them may advance the required payment. If one Party advances the payment owed by a non-paying Party, the Arbitration shall proceed, and the Arbitrator may allocate the non-paying Party's share of such costs, in accordance with Rules 24(f) and 31(c). An administrative suspension shall toll any other time limits contained in these Rules or the Parties' Agreement.
- (d) JAMS does not maintain an official record of documents filed in the Arbitration. If the Parties wish to have any documents returned to them, they must advise JAMS in writing within thirty (30) calendar days of the conclusion of the Arbitration. If special arrangements are required regarding file maintenance or document retention, they must

be agreed to in writing, and JAMS reserves the right to impose an additional fee for such special arrangements. Documents that are submitted for e-filing are retained for thirty (30) calendar days following the conclusion of the Arbitration.

(e) Unless the Parties' Agreement or applicable law provides otherwise, JAMS, if it determines that the Arbitrations so filed have common issues of fact or law, may consolidate Arbitrations in the following instances:

(i) If a Party files more than one Arbitration with JAMS, JAMS may consolidate the Arbitrations into a single Arbitration.

(ii) Where a Demand or Demands for Arbitration is or are submitted naming Parties already involved in another Arbitration or Arbitrations pending under these Rules, JAMS may decide that the new case or cases shall be consolidated into one or more of the pending proceedings and referred to one of the Arbitrators or panels of Arbitrators already appointed.

(iii) Where a Demand or Demands for Arbitration is or are submitted naming Parties that are not identical to the Parties in the existing Arbitration or Arbitrations, JAMS may decide that the new case or cases shall be consolidated into one or more of the pending proceedings and referred to one of the Arbitrators or panels of Arbitrators already appointed.

When rendering its decision, JAMS will take into account all circumstances, including the links between the cases and the progress already made in the existing Arbitrations.

Unless applicable law provides otherwise, where JAMS decides to consolidate a proceeding into a pending Arbitration, the Parties to the consolidated case or cases will be deemed to have waived their right to designate an Arbitrator as well as any contractual provision with respect to the site of the Arbitration.

(f) Where a third party seeks to participate in an Arbitration already pending under these Rules or where a Party to an Arbitration under these Rules seeks to compel a third party to participate in a pending Arbitration, the Arbitrator shall determine such request, taking into account all circumstances he or she deems relevant and applicable.

Rule 7. Number and Neutrality of Arbitrators; Appointment and Authority of Chairperson

(a) The Arbitration shall be conducted by one neutral Arbitrator, unless all Parties agree otherwise. In these Rules, the term "Arbitrator" shall mean, as the context requires, the Arbitrator or the panel of Arbitrators in a tripartite Arbitration.

(b) In cases involving more than one Arbitrator, the Parties shall agree on, or, in the absence of agreement, JAMS shall designate, the Chairperson of the Arbitration Panel. If the Parties and the Arbitrators agree, a single member of the Arbitration Panel may, acting alone, decide discovery and procedural matters, including the conduct of hearings to receive documents and testimony from third parties who have been subpoenaed to produce documents.

(c) Where the Parties have agreed that each Party is to name one Arbitrator, the Arbitrators so named shall be neutral and independent of the appointing Party, unless the Parties have agreed that they shall be non-neutral.

Rule 8. Service

(a) The Arbitrator may at any time require electronic filing and service of documents in an Arbitration. If an Arbitrator requires electronic filing, the Parties shall maintain and regularly monitor a valid, usable and live email

address for the receipt of all documents filed through JAMS Electronic Filing System. Any document filed electronically shall be considered as filed with JAMS when the transmission to JAMS Electronic Filing System is complete. Any document e-filed by 11:59 p.m. (of the sender's time zone) shall be deemed filed on that date. Upon completion of filing, JAMS Electronic Filing System shall issue a confirmation receipt that includes the date and time of receipt. The confirmation receipt shall serve as proof of filing.

(b) Every document filed with JAMS Electronic Filing System shall be deemed to have been signed by the Arbitrator, Case Manager, attorney or declarant who submits the document to JAMS Electronic Filing System, and shall bear the typed name, address and telephone number of a signing attorney. Documents containing signatures of third parties (i.e., unopposed motions, affidavits, stipulations, etc.) may also be filed electronically by indicating that the original signatures are maintained by the filing Party in paper format.

(c) Delivery of e-service documents through JAMS Electronic Filing System to other registered users shall be considered as valid and effective service and shall have the same legal effect as an original paper document. Recipients of e-service documents shall access their documents through JAMS Electronic Filing System. E-service shall be deemed complete when the Party initiating e-service completes the transmission of the electronic document(s) to JAMS Electronic Filing System for e-filing and/or e-service. Upon actual or constructive receipt of the electronic document(s) by the Party to be served, a Certificate of Electronic Service shall be issued by JAMS Electronic Filing System to the Party initiating e-service, and that Certificate shall serve as proof of service. Any Party who ignores or attempts to refuse e-service shall be deemed to have received the electronic document(s) 72 hours following the transmission of the electronic document(s) to JAMS Electronic Filing System.

(d) If an electronic filing or service does not occur because of (1) an error in the transmission of the document to JAMS Electronic Filing System or served Party that was unknown to the sending Party; (2) a failure to process the electronic document when received by JAMS Electronic Filing System; (3) the Party being erroneously excluded from the service list; or (4) other technical problems experienced by the filer, the Arbitrator or JAMS may, for good cause shown, permit the document to be filed *nunc pro tunc* to the date it was first attempted to be sent electronically. Or, in the case of service, the Party shall, absent extraordinary circumstances, be entitled to an order extending the date for any response or the period within which any right, duty or other act must be performed.

(e) For documents that are not filed electronically, service by a Party under these Rules is effected by providing one signed copy of the document to each Party and two copies in the case of a sole Arbitrator and four copies in the case of a tripartite panel to JAMS. Service may be made by hand-delivery, overnight delivery service or U.S. mail. Service by any of these means is considered effective upon the date of deposit of the document.

(f) In computing any period of time prescribed or allowed by these Rules for a Party to do some act within a prescribed period after the service of a notice or other paper on the Party and the notice or paper is served on the Party only by U.S. mail, three (3) calendar days shall be added to the prescribed period.

Rule 9. Notice of Claims

(a) Each Party shall afford all other Parties reasonable and timely notice of its claims, affirmative defenses or counterclaims. Any such notice shall include a short statement of its factual basis. No claim, remedy, counterclaim or affirmative defense will be considered by the Arbitrator in the absence of such prior notice to the other Parties, unless the Arbitrator determines that no Party has been unfairly prejudiced by such lack of formal notice or all Parties agree that such consideration is appropriate notwithstanding the lack of prior notice.

(b) Claimant's notice of claims is the Demand for Arbitration referenced in Rule 5. It shall include a statement of

the remedies sought. The Demand for Arbitration may attach and incorporate a copy of a Complaint previously filed with a court. In the latter case, Claimant may accompany the Complaint with a copy of any Answer to that Complaint filed by any Respondent.

(c) Within fourteen (14) calendar days of service of the notice of claim, a Respondent may submit to JAMS and serve on other Parties a response and a statement of any affirmative defenses, including jurisdictional challenges, or counterclaims it may have.

(d) Within fourteen (14) calendar days of service of a counterclaim, a Claimant may submit to JAMS and serve on other Parties a response to such counterclaim and any affirmative defenses, including jurisdictional challenges, it may have.

(e) Any claim or counterclaim to which no response has been served will be deemed denied.

(f) Jurisdictional challenges under Rule 11 shall be deemed waived, unless asserted in a response to a Demand or counterclaim or promptly thereafter, when circumstances first suggest an issue of arbitrability.

Rule 10. Changes of Claims

After the filing of a claim and before the Arbitrator is appointed, any Party may make a new or different claim against a Party or any third party that is subject to Arbitration in the proceeding. Such claim shall be made in writing, filed with JAMS and served on the other Parties. Any response to the new claim shall be made within fourteen (14) calendar days after service of such claim. After the Arbitrator is appointed, no new or different claim may be submitted, except with the Arbitrator's approval. A Party may request a hearing on this issue. Each Party has the right to respond to any new or amended claim in accordance with Rule 9(c) or (d).

Rule 11. Interpretation of Rules and Jurisdictional Challenges

(a) Once appointed, the Arbitrator shall resolve disputes about the interpretation and applicability of these Rules and conduct of the Arbitration Hearing. The resolution of the issue by the Arbitrator shall be final.

(b) Jurisdictional and arbitrability disputes, including disputes over the formation, existence, validity, interpretation or scope of the agreement under which Arbitration is sought, and who are proper Parties to the Arbitration, shall be submitted to and ruled on by the Arbitrator. The Arbitrator has the authority to determine jurisdiction and arbitrability issues as a preliminary matter.

(c) Disputes concerning the appointment of the Arbitrator shall be resolved by JAMS.

(d) The Arbitrator may, upon a showing of good cause or *sua sponte*, when necessary to facilitate the Arbitration, extend any deadlines established in these Rules, provided that the time for rendering the Award may be altered only in accordance with Rules 22(i) or 24.

Rule 12. Representation

(a) The Parties, whether natural persons or legal entities such as corporations, LLCs or partnerships, may be represented by counsel or any other person of the Party's choice. Each Party shall give prompt written notice to the Case Manager and the other Parties of the name, address, telephone and fax numbers and email address of its representative. The representative of a Party may act on the Party's behalf in complying with these Rules.

(b) Changes in Representation. A Party shall give prompt written notice to the Case Manager and the other Parties of any change in its representation, including the name, address, telephone and fax numbers and email address of the new representative. Such notice shall state that the written consent of the former representative, if any, and of

the new representative, has been obtained and shall state the effective date of the new representation.

Rule 13. Withdrawal from Arbitration

(a) No Party may terminate or withdraw from an Arbitration after the issuance of the Commencement Letter (see Rule 5), except by written agreement of all Parties to the Arbitration.

(b) A Party that asserts a claim or counterclaim may unilaterally withdraw that claim or counterclaim without prejudice by serving written notice on the other Parties and the Arbitrator. However, the opposing Parties may, within seven (7) calendar days of service of such notice, request that the Arbitrator condition the withdrawal upon such terms as he or she may direct.

Rule 14. *Ex Parte* Communications

(a) No Party may have any *ex parte* communication with a neutral Arbitrator, except as provided in section (b) of this Rule. The Arbitrator(s) may authorize any Party to communicate directly with the Arbitrator(s) by email or other written means as long as copies are simultaneously forwarded to the JAMS Case Manager and the other Parties.

(b) A Party may have *ex parte* communication with its appointed neutral or non-neutral Arbitrator as necessary to secure the Arbitrator's services and to assure the absence of conflicts, as well as in connection with the selection of the Chairperson of the arbitral panel.

(c) The Parties may agree to permit more extensive *ex parte* communication between a Party and a non-neutral Arbitrator. More extensive communication with a non-neutral Arbitrator may also be permitted by applicable law and rules of ethics.

Rule 15. Arbitrator Selection, Disclosures and Replacement

(a) Unless the Arbitrator has been previously selected by agreement of the Parties, JAMS may attempt to facilitate agreement among the Parties regarding selection of the Arbitrator.

(b) If the Parties do not agree on an Arbitrator, JAMS shall send the Parties a list of at least five (5) Arbitrator candidates in the case of a sole Arbitrator and ten (10) Arbitrator candidates in the case of a tripartite panel. JAMS shall also provide each Party with a brief description of the background and experience of each Arbitrator candidate. JAMS may replace any or all names on the list of Arbitrator candidates for reasonable cause at any time before the Parties have submitted their choice pursuant to subparagraph (c) below.

(c) Within seven (7) calendar days of service upon the Parties of the list of names, each Party may strike two (2) names in the case of a sole Arbitrator and three (3) names in the case of a tripartite panel, and shall rank the remaining Arbitrator candidates in order of preference. The remaining Arbitrator candidate with the highest composite ranking shall be appointed the Arbitrator. JAMS may grant a reasonable extension of the time to strike and rank the Arbitrator candidates to any Party without the consent of the other Parties.

(d) If this process does not yield an Arbitrator or a complete panel, JAMS shall designate the sole Arbitrator or as many members of the tripartite panel as are necessary to complete the panel.

(e) If a Party fails to respond to a list of Arbitrator candidates within seven (7) calendar days after its service, or fails to respond according to the instructions provided by JAMS, JAMS shall deem that Party to have accepted all of the Arbitrator candidates.

(f) Entities whose interests are not adverse with respect to the issues in dispute shall be treated as a single Party for purposes of the Arbitrator selection process. JAMS shall determine whether the interests between entities are

adverse for purposes of Arbitrator selection, considering such factors as whether the entities are represented by the same attorney and whether the entities are presenting joint or separate positions at the Arbitration.

(g) If, for any reason, the Arbitrator who is selected is unable to fulfill the Arbitrator's duties, a successor Arbitrator shall be chosen in accordance with this Rule. If a member of a panel of Arbitrators becomes unable to fulfill his or her duties after the beginning of a Hearing but before the issuance of an Award, a new Arbitrator will be chosen in accordance with this Rule, unless, in the case of a tripartite panel, the Parties agree to proceed with the remaining two Arbitrators. JAMS will make the final determination as to whether an Arbitrator is unable to fulfill his or her duties, and that decision shall be final.

(h) Any disclosures regarding the selected Arbitrator shall be made as required by law or within ten (10) calendar days from the date of appointment. Such disclosures may be provided in electronic format, provided that JAMS will produce a hard copy to any Party that requests it. The Parties and their representatives shall disclose to JAMS any circumstance likely to give rise to justifiable doubt as to the Arbitrator's impartiality or independence, including any bias or any financial or personal interest in the result of the Arbitration or any past or present relationship with the Parties or their representatives. The obligation of the Arbitrator, the Parties and their representatives to make all required disclosures continues throughout the Arbitration process.

(i) At any time during the Arbitration process, a Party may challenge the continued service of an Arbitrator for cause. The challenge must be based upon information that was not available to the Parties at the time the Arbitrator was selected. A challenge for cause must be in writing and exchanged with opposing Parties, who may respond within seven (7) calendar days of service of the challenge. JAMS shall make the final determination as to such challenge. Such determination shall take into account the materiality of the facts and any prejudice to the Parties. That decision will be final.

(j) Where the Parties have agreed that a Party-appointed Arbitrator is to be non-neutral, that Party-appointed Arbitrator is not obliged to withdraw if requested to do so only by the Party who did not appoint that Arbitrator.

Rule 16. Preliminary Conference

At the request of any Party or at the direction of the Arbitrator, a Preliminary Conference shall be conducted with the Parties or their counsel or representatives. The Preliminary Conference may address any or all of the following subjects:

- (a) The exchange of information in accordance with Rule 17 or otherwise;
- (b) The schedule for discovery as permitted by the Rules, as agreed by the Parties or as required or authorized by applicable law;
- (c) The pleadings of the Parties and any agreement to clarify or narrow the issues or structure the Arbitration Hearing;
- (d) The scheduling of the Hearing and any pre-Hearing exchanges of information, exhibits, motions or briefs;
- (e) The attendance of witnesses as contemplated by Rule 21;
- (f) The scheduling of any dispositive motion pursuant to Rule 18;
- (g) The premarking of exhibits, the preparation of joint exhibit lists and the resolution of the admissibility of exhibits;
- (h) The form of the Award; and

(i) Such other matters as may be suggested by the Parties or the Arbitrator.

The Preliminary Conference may be conducted telephonically and may be resumed from time to time as warranted.

Rule 16.1. Application of Expedited Procedures

(a) If these Expedited Procedures are referenced in the Parties' agreement to arbitrate or are later agreed to by all Parties, they shall be applied by the Arbitrator.

(b) The Claimant or Respondent may opt into the Expedited Procedures. The Claimant may do so by indicating the election in the Demand for Arbitration. The Respondent may opt into the Expedited Procedures by so indicating in writing to JAMS with a copy to the Claimant served within fourteen (14) days of receipt of the Demand for Arbitration. If a Party opts into the Expedited Procedures, the other side shall indicate within seven (7) calendar days of notice thereof whether it agrees to the Expedited Procedures.

(c) If one Party elects the Expedited Procedures and any other Party declines to agree to the Expedited Procedures, each Party shall have a client or client representative present at the first Preliminary Conference (which should, if feasible, be an in-person conference), unless excused by the Arbitrator for good cause.

Rule 16.2. Where Expedited Procedures Are Applicable

(a) The Arbitrator shall require compliance with Rule 17(a) prior to conducting the first Preliminary Conference. Each Party shall confirm in writing to the Arbitrator that it has so complied or shall indicate any limitations on full compliance and the reasons therefor.

(b) Document requests shall (1) be limited to documents that are directly relevant to the matters in dispute or to its outcome; (2) be reasonably restricted in terms of time frame, subject matter and persons or entities to which the requests pertain; and (3) not include broad phraseology such as "all documents directly or indirectly related to." The Requests shall not be encumbered with extensive "definitions" or "instructions." The Arbitrator may edit or limit the number of requests.

(c) E-Discovery shall be limited as follows:

(i) There shall be production of electronic documents only from sources used in the ordinary course of business. Absent a showing of compelling need, no such documents are required to be produced from backup servers, tapes or other media.

(ii) Absent a showing of compelling need, the production of electronic documents shall normally be made on the basis of generally available technology in a searchable format that is usable by the requesting Party and convenient and economical for the producing Party. Absent a showing of compelling need, the Parties need not produce metadata, with the exception of header fields for email correspondence.

(iii) The description of custodians from whom electronic documents may be collected should be narrowly tailored to include only those individuals whose electronic documents may reasonably be expected to contain evidence that is material to the dispute.

(iv) Where the costs and burdens of e-discovery are disproportionate to the nature of the dispute or to the amount in controversy, or to the relevance of the materials requested, the Arbitrator may either deny such requests or order disclosure on the condition that the requesting Party advance the reasonable cost of production to the other side,

subject to the allocation of costs in the final Award.

(v) The Arbitrator may vary these Rules after discussion with the Parties at the Preliminary Conference. (d)
Depositions of percipient witnesses shall be limited as follows:

(i) The limitation of one discovery deposition per side (Rule 17(b)) shall be applied by the Arbitrator, unless it is determined, based on all relevant circumstances, that more depositions are warranted. The Arbitrator shall consider the amount in controversy, the complexity of the factual issues, the number of Parties and the diversity of their interests and whether any or all of the claims appear, on the basis of the pleadings, to have sufficient merit to justify the time and expense associated with the requested discovery.

(ii) The Arbitrator shall also consider the additional factors listed in the JAMS Recommended Arbitration Discovery Protocols for Domestic Commercial Cases.

(e) Expert depositions, if any, shall be limited as follows: Where written expert reports are produced to the other side in advance of the Hearing (Rule 17(a)), expert depositions may be conducted only by agreement of the Parties or by order of the Arbitrator for good cause shown.

(f) Discovery disputes shall be resolved on an expedited basis.

(i) Where there is a panel of three Arbitrators, the Parties are encouraged to agree, by rule or otherwise, that the Chair or another member of the panel is authorized to resolve discovery issues, acting alone.

(ii) Lengthy briefs on discovery matters should be avoided. In most cases, the submission of brief letters will sufficiently inform the Arbitrator with regard to the issues to be decided.

(iii) The Parties should meet and confer in good faith prior to presenting any issues for the Arbitrator's decision.

(iv) If disputes exist with respect to some issues, that should not delay the Parties' discovery on remaining issues.

(g) The Arbitrator shall set a discovery cutoff not to exceed seventy-five (75) calendar days after the Preliminary Conference for percipient discovery and not to exceed one hundred five (105) calendar days for expert discovery (if any). These dates may be extended by the Arbitrator for good cause shown.

(h) Dispositive motions (Rule 18) shall not be permitted, except as set forth in the JAMS Recommended Arbitration Discovery Protocols for Domestic Commercial Cases or unless the Parties agree to that procedure.

(i) The Hearing shall commence within sixty (60) calendar days after the cutoff for percipient discovery. Consecutive Hearing days shall be established unless otherwise agreed by the Parties or ordered by the Arbitrator. These dates may be extended by the Arbitrator for good cause shown.

(j) The Arbitrator may alter any of these Procedures for good cause.

Rule 17. Exchange of Information

(a) The Parties shall cooperate in good faith in the voluntary and informal exchange of all non-privileged documents and other information (including electronically stored information ("ESI")) relevant to the dispute or claim immediately after commencement of the Arbitration. They shall complete an initial exchange of all relevant, non-

privileged documents, including, without limitation, copies of all documents in their possession or control on which they rely in support of their positions, and names of individuals whom they may call as witnesses at the Arbitration Hearing, within twenty-one (21) calendar days after all pleadings or notice of claims have been received. The Arbitrator may modify these obligations at the Preliminary Conference.

(b) Each Party may take one deposition of an opposing Party or of one individual under the control of the opposing Party. The Parties shall attempt to agree on the time, location and duration of the deposition. If the Parties do not agree, these issues shall be determined by the Arbitrator. The necessity of additional depositions shall be determined by the Arbitrator based upon the reasonable need for the requested information, the availability of other discovery options and the burdensomeness of the request on the opposing Parties and the witness.

(c) As they become aware of new documents or information, including experts who may be called upon to testify, all Parties continue to be obligated to provide relevant, non-privileged documents to supplement their identification of witnesses and experts and to honor any informal agreements or understandings between the Parties regarding documents or information to be exchanged. Documents that were not previously exchanged, or witnesses and experts that were not previously identified, may not be considered by the Arbitrator at the Hearing, unless agreed by the Parties or upon a showing of good cause.

(d) The Parties shall promptly notify JAMS when a dispute exists regarding discovery issues. A conference shall be arranged with the Arbitrator, either by telephone or in person, and the Arbitrator shall decide the dispute. With the written consent of all Parties, and in accordance with an agreed written procedure, the Arbitrator may appoint a special master to assist in resolving a discovery dispute.

Rule 18. Summary Disposition of a Claim or Issue

The Arbitrator may permit any Party to file a Motion for Summary Disposition of a particular claim or issue, either by agreement of all interested Parties or at the request of one Party, provided other interested Parties have reasonable notice to respond to the request.

Rule 19. Scheduling and Location of Hearing

(a) The Arbitrator, after consulting with the Parties that have appeared, shall determine the date, time and location of the Hearing. The Arbitrator and the Parties shall attempt to schedule consecutive Hearing days if more than one day is necessary.

(b) If a Party has failed to participate in the Arbitration process, the Arbitrator may set the Hearing without consulting with that Party. The non-participating Party shall be served with a Notice of Hearing at least thirty (30) calendar days prior to the scheduled date, unless the law of the relevant jurisdiction allows for, or the Parties have agreed to, shorter notice.

(c) The Arbitrator, in order to hear a third-party witness, or for the convenience of the Parties or the witnesses, may

conduct the Hearing at any location. Any JAMS Resolution Center may be designated a Hearing location for purposes of the issuance of a subpoena or subpoena *duces tecum* to a third-party witness.

Rule 20. Pre-Hearing Submissions

(a) Except as set forth in any scheduling order that may be adopted, at least fourteen (14) calendar days before the Arbitration Hearing, the Parties shall file with JAMS and serve and exchange (1) a list of the witnesses they intend to call, including any experts; (2) a short description of the anticipated testimony of each such witness and an estimate of the length of the witness' direct testimony; (3) any written expert reports that may be introduced at the Arbitration Hearing; and (4) a list of all exhibits intended to be used at the Hearing. The Parties should exchange with each other copies of any such exhibits to the extent that they have not been previously exchanged. The Parties should pre-mark exhibits and shall attempt to resolve any disputes regarding the admissibility of exhibits prior to the Hearing.

(b) The Arbitrator may require that each Party submit a concise written statement of position, including summaries of the facts and evidence a Party intends to present, discussion of the applicable law and the basis for the requested Award or denial of relief sought. The statements, which may be in the form of a letter, shall be filed with JAMS and served upon the other Parties at least seven (7) calendar days before the Hearing date. Rebuttal statements or other pre-Hearing written submissions may be permitted or required at the discretion of the Arbitrator.

Rule 21. Securing Witnesses and Documents for the Arbitration Hearing

At the written request of a Party, all other Parties shall produce for the Arbitration Hearing all specified witnesses in their employ or under their control without need of subpoena. The Arbitrator may issue subpoenas for the attendance of witnesses or the production of documents either prior to or at the Hearing pursuant to this Rule or Rule 19(c). The subpoena or subpoena *duces tecum* shall be issued in accordance with the applicable law. Pre-issued subpoenas may be used in jurisdictions that permit them. In the event a Party or a subpoenaed person objects to the production of a witness or other evidence, the Party or subpoenaed person may file an objection with the Arbitrator, who shall promptly rule on the objection, weighing both the burden on the producing Party and witness and the need of the proponent for the witness or other evidence.

Rule 22. The Arbitration Hearing

(a) The Arbitrator will ordinarily conduct the Arbitration Hearing in the manner set forth in these Rules. The Arbitrator may vary these procedures if it is determined to be reasonable and appropriate to do so.

(b) The Arbitrator shall determine the order of proof, which will generally be similar to that of a court trial.

(c) The Arbitrator shall require witnesses to testify under oath if requested by any Party, or otherwise at the discretion of the Arbitrator.

(d) Strict conformity to the rules of evidence is not required, except that the Arbitrator shall apply applicable law relating to privileges and work product. The Arbitrator shall consider evidence that he or she finds relevant and

material to the dispute, giving the evidence such weight as is appropriate. The Arbitrator may be guided in that determination by principles contained in the Federal Rules of Evidence or any other applicable rules of evidence. The Arbitrator may limit testimony to exclude evidence that would be immaterial or unduly repetitive, provided that all Parties are afforded the opportunity to present material and relevant evidence.

(e) The Arbitrator shall receive and consider relevant deposition testimony recorded by transcript or videotape, provided that the other Parties have had the opportunity to attend and cross-examine. The Arbitrator may in his or her discretion consider witness affidavits or other recorded testimony even if the other Parties have not had the opportunity to cross-examine, but will give that evidence only such weight as he or she deems appropriate.

(f) The Parties will not offer as evidence, and the Arbitrator shall neither admit into the record nor consider, prior settlement offers by the Parties or statements or recommendations made by a mediator or other person in connection with efforts to resolve the dispute being arbitrated, except to the extent that applicable law permits the admission of such evidence.

(g) The Hearing, or any portion thereof, may be conducted telephonically or videographically with the agreement of the Parties or at the discretion of the Arbitrator.

(h) When the Arbitrator determines that all relevant and material evidence and arguments have been presented, and any interim or partial Awards have been issued, the Arbitrator shall declare the Hearing closed. The Arbitrator may defer the closing of the Hearing until a date determined by the Arbitrator in order to permit the Parties to submit post-Hearing briefs, which may be in the form of a letter, and/or to make closing arguments. If post-Hearing briefs are to be submitted or closing arguments are to be made, the Hearing shall be deemed closed upon receipt by the Arbitrator of such briefs or at the conclusion of such closing arguments, whichever is later.

(i) At any time before the Award is rendered, the Arbitrator may, *sua sponte* or on application of a Party for good cause shown, reopen the Hearing. If the Hearing is reopened, the time to render the Award shall be calculated from the date the reopened Hearing is declared closed by the Arbitrator.

(j) The Arbitrator may proceed with the Hearing in the absence of a Party that, after receiving notice of the Hearing pursuant to Rule 19, fails to attend. The Arbitrator may not render an Award solely on the basis of the default or absence of the Party, but shall require any Party seeking relief to submit such evidence as the Arbitrator may require for the rendering of an Award. If the Arbitrator reasonably believes that a Party will not attend the Hearing, the Arbitrator may schedule the Hearing as a telephonic Hearing and may receive the evidence necessary to render an Award by affidavit. The notice of Hearing shall specify if it will be in person or telephonic.

(k) Any Party may arrange for a stenographic or other record to be made of the Hearing and shall inform the other Parties in advance of the Hearing.

(i) The requesting Party shall bear the cost of such stenographic record. If all other Parties agree to share the cost of the stenographic record, it shall be made available to the Arbitrator and may be used in the proceeding.

(ii) If there is no agreement to share the cost of the stenographic record, it may not be provided to the Arbitrator

and may not be used in the proceeding, unless the Party arranging for the stenographic record agrees to provide access to the stenographic record either at no charge or on terms that are acceptable to the Parties and the reporting service.

(iii) If the Parties agree to the Optional Arbitration Appeal Procedure (Rule 34), they shall, if possible, ensure that a stenographic or other record is made of the Hearing and shall share the cost of that record.

(iv) The Parties may agree that the cost of the stenographic record shall or shall not be allocated by the Arbitrator in the Award.

Rule 23. Waiver of Hearing

The Parties may agree to waive the oral Hearing and submit the dispute to the Arbitrator for an Award based on written submissions and other evidence as the Parties may agree.

Rule 24. Awards

(a) The Arbitrator shall render a Final Award or a Partial Final Award within thirty (30) calendar days after the date of the close of the Hearing, as defined in Rule 22(h) or (i), or, if a Hearing has been waived, within thirty (30) calendar days after the receipt by the Arbitrator of all materials specified by the Parties, except (1) by the agreement of the Parties; (2) upon good cause for an extension of time to render the Award; or (3) as provided in Rule 22(i). The Arbitrator shall provide the Final Award or the Partial Final Award to JAMS for issuance in accordance with this Rule.

(b) Where a panel of Arbitrators has heard the dispute, the decision and Award of a majority of the panel shall constitute the Arbitration Award.

(c) In determining the merits of the dispute, the Arbitrator shall be guided by the rules of law agreed upon by the Parties. In the absence of such agreement, the Arbitrator shall be guided by the rules of law and equity that he or she deems to be most appropriate. The Arbitrator may grant any remedy or relief that is just and equitable and within the scope of the Parties' agreement, including, but not limited to, specific performance of a contract or any other equitable or legal remedy.

(d) In addition to a Final Award or Partial Final Award, the Arbitrator may make other decisions, including interim or partial rulings, orders and Awards.

(e) Interim Measures. The Arbitrator may grant whatever interim measures are deemed necessary, including injunctive relief and measures for the protection or conservation of property and disposition of disposable goods. Such interim measures may take the form of an interim or Partial Final Award, and the Arbitrator may require security for the costs of such measures. Any recourse by a Party to a court for interim or provisional relief shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

(f) The Award of the Arbitrator may allocate Arbitration fees and Arbitrator compensation and expenses, unless such an allocation is expressly prohibited by the Parties' Agreement. (Such a prohibition may not limit the power of the

Arbitrator to allocate Arbitration fees and Arbitrator compensation and expenses pursuant to Rule 31(c).)

(g) The Award of the Arbitrator may allocate attorneys' fees and expenses and interest (at such rate and from such date as the Arbitrator may deem appropriate) if provided by the Parties' Agreement or allowed by applicable law. When the Arbitrator is authorized to award attorneys' fees and must determine the reasonable amount of such fees, he or she may consider whether the failure of a Party to cooperate reasonably in the discovery process and/or comply with the Arbitrator's discovery orders caused delay to the proceeding or additional costs to the other Parties.

(h) The Award shall consist of a written statement signed by the Arbitrator regarding the disposition of each claim and the relief, if any, as to each claim. Unless all Parties agree otherwise, the Award shall also contain a concise written statement of the reasons for the Award.

(i) After the Award has been rendered, and provided the Parties have complied with Rule 31, the Award shall be issued by serving copies on the Parties. Service may be made by U.S. mail. It need not be sent certified or registered.

(j) Within seven (7) calendar days after service of a Partial Final Award or Final Award by JAMS, any Party may serve upon the other Parties and on JAMS a request that the Arbitrator correct any computational, typographical or other similar error in an Award (including the reallocation of fees pursuant to Rule 31(c) or on account of the effect of an offer to allow judgment), or the Arbitrator may *sua sponte* propose to correct such errors in an Award. A Party opposing such correction shall have seven (7) calendar days thereafter in which to file any objection. The Arbitrator may make any necessary and appropriate corrections to the Award within twenty-one (21) calendar days of receiving a request or fourteen (14) calendar days after his or her proposal to do so. The Arbitrator may extend the time within which to make corrections upon good cause. The corrected Award shall be served upon the Parties in the same manner as the Award.

(k) The Award is considered final, for purposes of either the Optional Arbitration Appeal Procedure pursuant to Rule 34 or a judicial proceeding to enforce, modify or vacate the Award pursuant to Rule 25, fourteen (14) calendar days after service is deemed effective if no request for a correction is made, or as of the effective date of service of a corrected Award.

Rule 25. Enforcement of the Award

Proceedings to enforce, confirm, modify or vacate an Award will be controlled by and conducted in conformity with the Federal Arbitration Act, 9 U.S.C. Sec 1, *et seq.*, or applicable state law. The Parties to an Arbitration under these Rules shall be deemed to have consented that judgment upon the Award may be entered in any court having jurisdiction thereof.

Rule 26. Confidentiality and Privacy

(a) JAMS and the Arbitrator shall maintain the confidential nature of the Arbitration proceeding and the Award, including the Hearing, except as necessary in connection with a judicial challenge to or enforcement of an Award, or unless otherwise required by law or judicial decision.

(b) The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets or other sensitive information.

(c) Subject to the discretion of the Arbitrator or agreement of the Parties, any person having a direct interest in the Arbitration may attend the Arbitration Hearing. The Arbitrator may exclude any non-Party from any part of a Hearing.

Rule 27. Waiver

(a) If a Party becomes aware of a violation of or failure to comply with these Rules and fails promptly to object in writing, the objection will be deemed waived, unless the Arbitrator determines that waiver will cause substantial injustice or hardship.

(b) If any Party becomes aware of information that could be the basis of a challenge for cause to the continued service of the Arbitrator, such challenge must be made promptly, in writing, to the Arbitrator or JAMS. Failure to do so shall constitute a waiver of any objection to continued service by the Arbitrator.

Rule 28. Settlement and Consent Award

(a) The Parties may agree, at any stage of the Arbitration process, to submit the case to JAMS for mediation. The JAMS mediator assigned to the case may not be the Arbitrator or a member of the Appeal Panel, unless the Parties so agree, pursuant to Rule 28(b).

(b) The Parties may agree to seek the assistance of the Arbitrator in reaching settlement. By their written agreement to submit the matter to the Arbitrator for settlement assistance, the Parties will be deemed to have agreed that the assistance of the Arbitrator in such settlement efforts will not disqualify the Arbitrator from continuing to serve as Arbitrator if settlement is not reached; nor shall such assistance be argued to a reviewing court as the basis for vacating or modifying an Award.

(c) If, at any stage of the Arbitration process, all Parties agree upon a settlement of the issues in dispute and request the Arbitrator to embody the agreement in a Consent Award, the Arbitrator shall comply with such request, unless the Arbitrator believes the terms of the agreement are illegal or undermine the integrity of the Arbitration process. If the Arbitrator is concerned about the possible consequences of the proposed Consent Award, he or she shall inform the Parties of that concern and may request additional specific information from the Parties regarding the proposed Consent Award. The Arbitrator may refuse to enter the proposed Consent Award and may withdraw from the case.

Rule 29. Sanctions

The Arbitrator may order appropriate sanctions for failure of a Party to comply with its obligations under any of these Rules or with an order of the Arbitrator. These sanctions may include, but are not limited to, assessment of Arbitration fees and Arbitrator compensation and expenses; assessment of any other costs occasioned by the actionable conduct, including reasonable attorneys' fees; exclusion of certain evidence; drawing adverse inferences;

or, in extreme cases, determining an issue or issues submitted to Arbitration adversely to the Party that has failed to comply.

Rule 30. Disqualification of the Arbitrator as a Witness or Party and Exclusion of Liability

(a) The Parties may not call the Arbitrator, the Case Manager or any other JAMS employee or agent as a witness or as an expert in any pending or subsequent litigation or other proceeding involving the Parties and relating to the dispute that is the subject of the Arbitration. The Arbitrator, Case Manager and other JAMS employees and agents are also incompetent to testify as witnesses or experts in any such proceeding.

(b) The Parties shall defend and/or pay the cost (including any attorneys' fees) of defending the Arbitrator, Case Manager and/or JAMS from any subpoenas from outside parties arising from the Arbitration.

(c) The Parties agree that neither the Arbitrator, nor the Case Manager, nor JAMS is a necessary Party in any litigation or other proceeding relating to the Arbitration or the subject matter of the Arbitration, and neither the Arbitrator, nor the Case Manager, nor JAMS, including its employees or agents, shall be liable to any Party for any act or omission in connection with any Arbitration conducted under these Rules, including, but not limited to, any disqualification of or recusal by the Arbitrator.

Rule 31. Fees

(a) Each Party shall pay its *pro rata* share of JAMS fees and expenses as set forth in the JAMS fee schedule in effect at the time of the commencement of the Arbitration, unless the Parties agree on a different allocation of fees and expenses. JAMS' agreement to render services is jointly with the Party and the attorney or other representative of the Party in the Arbitration. The non-payment of fees may result in an administrative suspension of the case in accordance with Rule 6(c).

(b) JAMS requires that the Parties deposit the fees and expenses for the Arbitration from time to time during the course of the proceedings and prior to the Hearing. The Arbitrator may preclude a Party that has failed to deposit its *pro rata* or agreed-upon share of the fees and expenses from offering evidence of any affirmative claim at the Hearing.

(c) The Parties are jointly and severally liable for the payment of JAMS Arbitration fees and Arbitrator compensation and expenses. In the event that one Party has paid more than its share of such fees, compensation and expenses, the Arbitrator may award against any other Party any such fees, compensation and expenses that such Party owes with respect to the Arbitration.

(d) Entities whose interests are not adverse with respect to the issues in dispute shall be treated as a single Party for purposes of JAMS' assessment of fees. JAMS shall determine whether the interests between entities are adverse for purpose of fees, considering such factors as whether the entities are represented by the same attorney and whether the entities are presenting joint or separate positions at the Arbitration.

Rule 32. Bracketed (or High-Low) Arbitration Option

(a) At any time before the issuance of the Arbitration Award, the Parties may agree, in writing, on minimum and maximum amounts of damages that may be awarded on each claim or on all claims in the aggregate. The Parties shall promptly notify JAMS and provide to JAMS a copy of their written agreement setting forth the agreed-upon minimum and maximum amounts.

(b) JAMS shall not inform the Arbitrator of the agreement to proceed with this option or of the agreed-upon minimum and maximum levels without the consent of the Parties.

(c) The Arbitrator shall render the Award in accordance with Rule 24.

(d) In the event that the Award of the Arbitrator is between the agreed-upon minimum and maximum amounts, the Award shall become final as is. In the event that the Award is below the agreed-upon minimum amount, the final Award issued shall be corrected to reflect the agreed-upon minimum amount. In the event that the Award is above the agreed-upon maximum amount, the final Award issued shall be corrected to reflect the agreed-upon maximum amount.

Rule 33. Final Offer (or Baseball) Arbitration Option

(a) Upon agreement of the Parties to use the option set forth in this Rule, at least seven (7) calendar days before the Arbitration Hearing, the Parties shall exchange and provide to JAMS written proposals for the amount of money damages they would offer or demand, as applicable, and that they believe to be appropriate based on the standard set forth in Rule 24(c). JAMS shall promptly provide copies of the Parties' proposals to the Arbitrator, unless the Parties agree that they should not be provided to the Arbitrator. At any time prior to the close of the Arbitration Hearing, the Parties may exchange revised written proposals or demands, which shall supersede all prior proposals. The revised written proposals shall be provided to JAMS, which shall promptly provide them to the Arbitrator, unless the Parties agree otherwise.

(b) If the Arbitrator has been informed of the written proposals, in rendering the Award, the Arbitrator shall choose between the Parties' last proposals, selecting the proposal that the Arbitrator finds most reasonable and appropriate in light of the standard set forth in Rule 24(c). This provision modifies Rule 24(h) in that no written statement of reasons shall accompany the Award.

(c) If the Arbitrator has not been informed of the written proposals, the Arbitrator shall render the Award as if pursuant to Rule 24, except that the Award shall thereafter be corrected to conform to the closest of the last proposals and the closest of the last proposals will become the Award.

(d) Other than as provided herein, the provisions of Rule 24 shall be applicable.

Rule 34. Optional Arbitration Appeal Procedure

The Parties may agree at any time to the JAMS Optional Arbitration Appeal Procedure. All Parties must agree in writing for such procedure to be effective. Once a Party has agreed to the Optional Arbitration Appeal Procedure, it

cannot unilaterally withdraw from it, unless it withdraws, pursuant to Rule 13, from the Arbitration.

Local Solutions. Global Reach. TM

JAMS successfully resolves business and legal disputes by providing efficient, cost-effective and impartial ways of overcoming barriers at any stage of conflict. JAMS offers customized dispute resolution services locally and globally through a combination of industry-specific experience, first-class client service, top-notch facilities and highly trained panelists.

Fees & Costs

[Arbitration Schedule of Fees & Costs](#) >

Exhibit 12

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8 Attorneys for Respondent and Counter-Claimant
Wark Entertainment, Inc. f/s/o Barry Josephson
9

10 JAMS

11 LOS ANGELES, CALIFORNIA
12

13 TWENTIETH CENTURY FOX FILM
14 CORPORATION, a Delaware corporation;
FOX ENTERTAINMENT GROUP, LLC, a
15 Delaware limited liability corporation;
TWENTY-FIRST CENTURY FOX, INC., a
16 Delaware corporation; and FOX
BROADCASTING COMPANY, a Delaware
17 corporation,

18 Claimants,

19 vs.

20 WARK ENTERTAINMENT, INC. f/s/o
BARRY JOSEPHSON; TEMPERANCE
21 BRENNAN, L.P. f/s/o KATHLEEN REICHS;
SNOOKER DOODLE PRODUCTIONS, INC.
22 f/s/o EMILY DESCHANEL; and BERTHA
BLUE, INC. f/s/o DAVID BOREANAZ,
23

24 Respondents.
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27
28

JAMS Reference No. 1220052735

Hon. Peter D. Lichtman (Ret.)

STIPULATION RE: MEMORANDUM OF COSTS

Court Action Filed: November 25, 2015
Arbitration Initiated: January 11, 2016
Hearing Dates: July 9-27, August 6-13, 2018

1 WARK ENTERTAINMNET, INC. f/s/o
2 BARRY JOSEPHSON; TEMPERANCE
3 BRENNAN, L.P. f/s/o KATHLEEN REICHS;
4 SNOOKER DOODLE PRODUCTIONS, INC.
f/s/o EMILY DESCHANEL; and BERTHA
BLUE, INC. f/s/o DAVID BOREANAZ,

5 Counter-Claimants,

6 vs.

7 TWENTIETH CENTURY FOX FILM
CORPORATION, a Delaware corporation;
8 FOX ENTERTAINMENT GROUP, LLC, a
Delaware limited liability corporation;
9 TWENTY-FIRST CENTURY FOX, INC., a
Delaware corporation; and FOX
10 BROADCASTING COMPANY, a Delaware
corporation,

11 Counter-Respondents.
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1 Pursuant to the Arbitrator's December 23, 2018 Scheduling Order, the parties have met
2 and conferred regarding the Respondents' respective Memoranda of Costs, and have agreed as
3 follows:

4 1. Under the parties' respective agreements, the prevailing party in this proceeding is
5 entitled to "all costs of arbitration, including reasonable [] attorneys' fees and costs." (Ex. 54-008
6 ¶ 10.c; *see also* Ex. 51-0010 ¶ 13.c [same]; Ex. 67-006 ¶ b.iii [same]; Ex. 394-007 ¶ c [same].)
7 Claimants Twentieth Century Fox Film Corporation; Fox Entertainment Group, LLC; Twenty-
8 First Century Fox, Inc.; and Fox Broadcasting Company (collectively, "Fox") hereby stipulate that
9 Respondents are the "prevailing parties" under their respective agreements.

10 2. Respondent Wark Entertainment f/s/o Barry Josephson is seeking \$2,771,494.30 in
11 attorneys' fees and \$787,114 in costs, for a total of \$3,558,608.30. Respondents Temperance
12 Brennan, L.P. f/s/o Kathleen Reichs; Snooker Doodle Productions, Inc. f/s/o Emily Deschanel;
13 and Bertha Blue, Inc. f/s/o David Boreanaz are seeking \$3,087,989.50 in attorneys' fees and
14 \$754,953.44 in costs, for a total of \$3,842,942.94. Fox hereby stipulates that these amounts are
15 "reasonable" under the parties' respective agreements and agrees that such amounts shall be
16 incorporated into the Arbitrator's Final Award to Respondents and shall not be challenged unless
17 and until any portion of the Final Award is corrected or vacated.

18 3. In consideration of Fox's agreement to the reasonableness of the aforementioned
19 amounts and agreement to pay such amounts, Respondents hereby agree to forego submission of
20 Memoranda of Costs. Notwithstanding the foregoing, Respondents reserve their right to seek fees
21 and costs incurred from the effective date of this stipulation (January 2, 2019) through
22 confirmation and/or resolution of any appeal of the Final Award.
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27
28

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TEL 310.566.9800 • FAX 310.566.9850

1 DATED: January __, 2019

MUNGER, TOLLES & OLSON LLP

2
3 By:

4 GLENN D. POMERANTZ

5 Attorneys for Claimants and Counter-Respondents
6 TWENTIETH CENTURY FOX FILM
7 CORPORATION; FOX ENTERTAINMENT GROUP,
8 LLC; TWENTY-FIRST CENTURY FOX, INC.; FOX
9 BROADCASTING COMPANY

10 DATED: January __, 2019

KINSELLA WEITZMAN ISER KUMP &
ALDISERT LLP

11
12
13 By:

Dale F. Kinsella for DFK
14 DALE F. KINSELLA

15 Attorney for Respondent and Counter-Claimant WARK
16 ENTERTAINMENT, INC., f/s/o BARRY
17 JOSEPHSON.

18
19 DATED: January __, 2019

KASOWITZ BENSON TORRES LLP

20
21
22 By:

23 DANIEL A. SAUNDERS

24 Attorney for Respondents and Counter-Claimants
25 TEMPERANCE BRENNAN L.P. f/s/o KATHLEEN
26 REICHS; SNOOKER DOODLE PRODUCTIONS,
27 INC. f/s/o EMILY DESCHANEL; BERTHA BLUE,
28 INC. f/s/o DAVID BOREANAZ

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1 DATED: January __, 2019

MUNGER, TOLLES & OLSON LLP

2
3 By: _____

4 GLENN D. POMERANTZ

5 Attorneys for Claimants and Counter-Respondents
6 TWENTIETH CENTURY FOX FILM
7 CORPORATION; FOX ENTERTAINMENT GROUP,
8 LLC; TWENTY-FIRST CENTURY FOX, INC.; FOX
9 BROADCASTING COMPANY

10 DATED: January __, 2019

KINSELLA WEITZMAN ISER KUMP &
ALDISERT LLP

11
12
13 By: _____

14 DALE F. KINSELLA

15 Attorney for Respondent and Counter-Claimant WARK
16 ENTERTAINMENT, INC., f/s/o BARRY
17 JOSEPHSON.

18
19 DATED: January __, 2019

KASOWITZ BENSON TORRES LLP

20
21
22 By:  _____

23 DANIEL A. SAUNDERS

24 Attorney for Respondents and Counter-Claimants
25 TEMPERANCE BRENNAN L.P. f/s/o KATHLEEN
26 REICHS; SNOOKER DOODLE PRODUCTIONS,
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28 INC. f/s/o DAVID BOREANAZ

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SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

1 DATED: January 4, 2019

MUNGER, TOLLES & OLSON LLP

2
3 By: Glenn Pomerantz
4 GLENN D. POMERANTZ

5 Attorneys for Claimants and Counter-Respondents
6 TWENTIETH CENTURY FOX FILM
7 CORPORATION; FOX ENTERTAINMENT GROUP,
8 LLC; TWENTY-FIRST CENTURY FOX, INC.; FOX
9 BROADCASTING COMPANY

10 DATED: January __, 2019

KINSELLA WEITZMAN ISER KUMP &
ALDISERT LLP

11
12
13 By: _____
14 DALE F. KINSELLA

15 Attorney for Respondent and Counter-Claimant WARK
16 ENTERTAINMENT, INC., f/s/o BARRY
17 JOSEPHSON.

18
19 DATED: January __, 2019

KASOWITZ BENSON TORRES LLP

20
21
22 By: _____
23 DANIEL A. SAUNDERS

24 Attorney for Respondents and Counter-Claimants
25 TEMPERANCE BRENNAN L.P. f/s/o KATHLEEN
26 REICHS; SNOOKER DOODLE PRODUCTIONS,
27 INC. f/s/o EMILY DESCHANEL; BERTHA BLUE,
28 INC. f/s/o DAVID BOREANAZ

Exhibit 13

1 *Counsel listed on signature page*

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JAMS

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LOS ANGELES, CALIFORNIA

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TWENTIETH CENTURY FOX FILM
CORPORATION, a Delaware corporation;
FOX ENTERTAINMENT GROUP, LLC, a
Delaware limited liability corporation;
TWENTY-FIRST CENTURY FOX, INC., a
Delaware corporation; and FOX
BROADCASTING COMPANY, a Delaware
corporation,

JAMS Ref. No. 1220052735

**JOINT STIPULATION REGARDING
FINANCIAL CONDITION**

Judge: Hon. Peter D. Lichtman (Ret.)

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Claimants,

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vs.

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WARK ENTERTAINMENT, INC. f/s/o
BARRY JOSEPHSON; TEMPERANCE
BRENNAN, L.P. f/s/o KATHLEEN REICHS;
SNOOKER DOODLE PRODUCTIONS, INC.
f/s/o EMILY DESCHANEL; and BERTHA
BLUE, INC. f/s/o DAVID BOREANAZ,

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Respondents.

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JOINT STIPULATION

1 Claimants Twentieth Century Fox Film Corporation ("TCFTV"), Fox Entertainment
2 Group ("FEG"), Twenty-First Century Fox, Inc. ("21CF") and Fox Broadcasting Company
3 ("FBC" and, collectively with TCFTV, FEG and 21CF "Claimants") and Respondents Wark
4 Entertainment, Inc., Temperance Brennan, L.P., Snooker Doodle Productions, Inc. and Bertha
5 Blue, Inc., hereby stipulate as follows:

- 6
- 7 1. As reflected in the attached page from 21CF's Form 10-Q for the
8 quarter ended September 30, 2018, 21CF's total equity/net worth is
9 \$21.924B.
- 10 2. The attached page from 21CF's Form 10-Q shall become part of the
11 record in this matter.
- 12 3. Claimants will not assert that the Arbitrator had insufficient financial
13 condition information about FBC, FEG, or TCFTV on which to base a
14 punitive damages award against those entities.

15 Nothing in the foregoing waives or otherwise affects Claimants' positions that an award
16 of punitive damages in this matter is inappropriate and beyond the Arbitrator's authority, or that
17 the amount of punitive damages imposed is impermissibly excessive under the California and
18 United States Constitutions and applicable case law.

19 DATED: January 4, 2019

MUNGER, TOLLES & OLSON LLP

20 By: Glenn Pomerantz
21 GLENN POMERANTZ
22 Attorneys for Claimants and Counter-Respondents
23 TWENTIETH CENTURY FOX FILM
24 CORPORATION; FOX ENTERTAINMENT GROUP,
25 LLC; TWENTY-FIRST CENTURY FOX, INC.; FOX
26 BROADCASTING COMPANY

27
28
JOINT STIPULATION

1 DATED: January 4, 2019

KASOWITZ BENSON TORRES LLP

2
3
4 By: 

DANIEL A. SAUNDERS

5 Attorneys for Respondents and Counter-Claimants
6 TEMPERANCE BRENNAN, L.P; SNOOKER
7 DOODLE PRODUCTIONS, INC; BERTHA BLUE,
8 INC.

9 DATED: January 4, 2019

KINSELLA WEITZMAN ISER KUMP & ADISERT
LLP

10
11 By:  for DFK

12 DALE F. KINSELLA

13 Attorneys for Respondent and Counter-Claimant
14 WARK ENTERTAINMENT, INC.
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JOINT STIPULATION

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

FORM 10-Q

(Mark One)

☒ Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the quarterly period ended September 30, 2018

or

☐ Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the transition period from _____ to _____

Commission file number 001-32352

TWENTY-FIRST CENTURY FOX, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation or Organization)

1211 Avenue of the Americas, New York, New York
(Address of Principal Executive Offices)

26-0075658
(I.R.S. Employer
Identification No.)

10036
(Zip Code)

Registrant's telephone number, including area code (212) 852-7000

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>	Non-accelerated filer	<input type="checkbox"/>
Smaller reporting company	<input type="checkbox"/>	Emerging growth company	<input type="checkbox"/>		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of November 2, 2018, 1,056,972,538 shares of Class A Common Stock, par value \$0.01 per share, and 798,520,953 shares of Class B Common Stock, par value \$0.01 per share, were outstanding.

TWENTY-FIRST CENTURY FOX, INC.
CONSOLIDATED BALANCE SHEETS
(IN MILLIONS, EXCEPT SHARE AND PER SHARE AMOUNTS)

	As of September 30, 2018 (unaudited)	As of June 30, 2018 (audited)
ASSETS		
Current assets		
Cash and cash equivalents	\$ 7,083	\$ 7,622
Receivables, net	7,326	7,120
Inventories, net	3,804	3,669
Other	915	922
Total current assets	19,128	19,333
Non-current assets		
Receivables, net	892	724
Investments	4,640	4,112
Inventories, net	7,760	7,518
Property, plant and equipment, net	1,949	1,956
Intangible assets, net	6,032	6,101
Goodwill	12,755	12,768
Other non-current assets	1,356	1,319
Total assets	\$ 54,512	\$ 53,831
LIABILITIES AND EQUITY		
Current liabilities		
Borrowings	\$ 872	\$ 1,054
Accounts payable, accrued expenses and other current liabilities	3,381	3,248
Participations, residuals and royalties payable	1,634	1,748
Program rights payable	1,151	1,368
Deferred revenue	764	826
Total current liabilities	7,802	8,244
Non-current liabilities		
Borrowings	18,379	18,469
Other liabilities	3,907	3,664
Deferred income taxes	1,949	1,892
Redeemable noncontrolling interests	551	764
Commitments and contingencies		
Equity		
Class A common stock(a)	11	11
Class B common stock(b)	8	8
Additional paid-in capital	12,534	12,612
Retained earnings	10,499	8,934
Accumulated other comprehensive loss	(2,354)	(2,001)
Total Twenty-First Century Fox, Inc. stockholders' equity	20,698	19,564
Noncontrolling interests	1,226	1,234
Total equity	21,924	20,798
Total liabilities and equity	\$ 54,512	\$ 53,831

- (a) **Class A common stock**, \$0.01 par value per share, 6,000,000,000 shares authorized, 1,056,972,538 shares and 1,054,032,541 shares issued and outstanding, net of 123,687,371 treasury shares at par as of September 30, 2018 and June 30, 2018, respectively.
- (b) **Class B common stock**, \$0.01 par value per share, 3,000,000,000 shares authorized, 798,520,953 shares issued and outstanding, net of 356,993,807 treasury shares at par as of September 30, 2018 and June 30, 2018.

The accompanying notes are an integral part of these Unaudited Consolidated Financial Statements.